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THE PENSION COMMISSION OF ONTARIO BULLETIN

February, 1990

Volume 1, Issue 1



Message From the Superintendent of Pensions



I AM VERY PLEASED to welcome you to the first issue of the PCO Bulletin. Our intention for this publication is to create and sustain a vital link between the regulatory authority and plan sponsors, administrators and their agents or consultants. If we succeed in our objective, the PCO Bulletin will become an important publication for anyone practising in the pension field today.

The latter half of the 1980s witnessed unprecedented change in the pension industry and this has affected how we all conduct business. Sweeping provincial reform in Ontario and other jurisdictions created a maelstrom in the pension industry; now some people are concerned that pensions as we know them will not survive. Nevertheless, we have adjusted gradually to the new realities: we recognize the improvements to benefits, rights and entitlements; there is greater freedom for fund investment; there is greater safety through new funding rules. But, we all have been and continue to be challenged by emerging issues. At the Pension Commission, staff are dedicated to finding workable solutions in concert with practitioners in the pension industry.

Another contentious matter that must be addressed with our counterparts in Finance and Revenue Canada in Ottawa is harmonizing our often competing legislation so that plan sponsors are not running afoul of either federal or provincial legislation. Solutions must be found.

The objective of national consensus, as practitioners can testify, is a long way from being fully realized. As regulators in all jurisdictions responded to local realities of the workplace, in the context of their interpretations of the social contract, political differences deepened causing pension laws to diverge sharply. Although regulators meet twice annually under the auspices of the Canadian Association of Pension Supervisory Authorities (CAPSA), we must rededicate ourselves to the objective of national consensus.

All of these persistent and difficult conditions point to the need for renewed cooperation among our various pension constituencies to find workable solutions acceptable to the majority.

The PCO Bulletin is a device to foster greater

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understanding of the complexity of the issues and a means to include all interested parties in the discussion. The objectives of the PCO Bulletin are:

- to clarify and explain policies and practices;
- to disseminate information;
- to invite industry participation;
- to seek industry comments on draft policies;
- to seek ways to consolidate pensions generally;
- to lighten the burden of administration; and
- to facilitate compliance with the legislation.

The PCO Bulletin will change and evolve as we confront the issues and address the needs of the industry we regulate. I urge you to read, respond and participate.

Robert H. Hawkes
Superintendent of Pensions

Message From the Director of the Secretariat

I JOIN WITH THE Superintendent in welcoming you to the first issue of the PCO Bulletin.

Our circulation for the first issue is almost 12,000 and readership covers a wide range of interests. The largest single audience is pension plan Administrators. The legislation speaks to the fiduciary duty and obligations of the pension plan Administrator for all activities relating to pension plan and pension fund administration. Although in the past many Administrators delegated the function of day-to-day administration to others, Administrators and their agents are now legally responsible. Because Administrators are on the front line of accountability, it is vitally important they keep abreast of industry developments.

A key audience of the PCO Bulletin includes the actuarial, accounting, and legal professionals, as well as pension industry consultants. These are agents of and advisors to the Administrator referred to in the legislation, and as such, they are also bound by duties of care. Industry consultants also include members of the insurance industry, investment counsellors and pooled fund managers who have an integral role to play in the pension industry. Pension industry associations and financial institutions also closely monitor and track regulatory developments and practices.

More peripheral to our business - but observing with great interest - are business associations, other government regulatory bodies and related government departments, the academic community, and the media.

It is helpful to be mindful of this broad readership base when considering the editorial content of the PCO Bulletin; the editorial content is designed to reflect the concerns, interests and needs of our readers. We hope to include something for everyone, but will concentrate on serving the needs of our key audience. Future volumes will feature articles dealing with practical and timely issues in respect of actuarial, legal, investment, accounting and audit concerns and administrative practices. We will be publishing Commission decisions relating to pension matters and expect eventually to publish proceedings before the Commission.

Our editorial objective is to keep you informed and involved in the public consultation process with hard information to improve the efficiency of administration, and to facilitate effective policymaking. We welcome your comments and suggestions in relation to the PCO Bulletin. Please address these to The Editor, PCO Bulletin, Secretariat.

Priscilla H. Healy
Director, Secretariat

How to Get Assistance From the PCO

ADMINISTRATORS, their agents, and consultants pose questions daily to staff of the PCO either verbally or by letter. Although staff do make efforts to provide service and assistance on a timely basis, they are sometimes hampered because of the formulation of questions or lack of information. Please keep the following points in mind when drafting or formulating your questions.

Remember our mandate and objectives.

The mandate of the PCO is to promote the establishment, extension and improvement of employer-sponsored pension plans. Within that framework, our objectives are to:

- protect the solvency of plans;
- ensure even-handed treatment of employees' pension rights;
- promote retirement planning and expand pension coverage;
- encourage timely disclosure to plan members; and
- provide the promised accrued benefits and entitlements.

Determine whether what you want to know is consistent with our mandate and objectives.

Your enquiry will be answered by phone, if possible; but you may be asked to put it in writing.

An enquiry may appear to be straightforward; but it could be complex or raise other issues with related

serious implications. In addition, staff of the PCO are required to deal with enquiries responsibly for the protection of all parties. For these reasons, you may be asked to make your enquiry in writing.

We will expect you to formulate the issue as clearly as possible so the enquiry can be processed. If the following points have not been addressed or considered, the PCO may have no alternative but to return the enquiry to you unanswered for lack of sufficient and pertinent information.

Please follow these steps to ensure expedited treatment of your enquiry:

1. provide a brief background note;
2. explain the business purpose of your proposed action;
3. separate the legal issues from the policy issues;
4. analyze the issues;
5. state your own opinion and support it; and
6. reference the relevant sections of the PBA, 1987 and regulation.

Unless you state your client's objective, we cannot give any direction. Unless you explain the context or business purpose of the proposed action, we cannot respond to the practical realities of your question.

It is important to distinguish the legal issues. We are **not** able to provide legal advice; that is the responsibility of your solicitor. The issues we can and will deal with and offer direction on are administrative and policy issues. Please provide us with your assessment of the situation; tell us what you think and why. It is helpful to our understanding if you express your view of any broader policy implications that the issue may raise. Your suggested direction or answer may well be correct.

Staff of the PCO will provide you with the best service possible. The quality of the service and the timeliness of the response depends largely on the quality and thoughtfulness of your submission. Please direct your policy enquiries to Jerry Williams, Research Analyst, Secretariat.

Notices

PCO moves to self-funding status

ON JANUARY 2, 1990 the PCO published a Special Notice dealing with amendments to the regulation with respect to fee increases for registration of pension plans and filing of annual information returns. The amendments to the regulation filed on December 15, 1989 (and published in the Ontario Gazette on December 30, 1989) providing for these fee increases moved the PCO to full self-funding status.

For many years, statistics have shown that

approximately 37% of Ontarians have employer-sponsored pension plans. Since pension plans do not apply to a majority of taxpayers, the government has determined that regulatory services should be on a user-pay basis.

Those who are familiar with the government's proposals released in March 1989 draft legislation will recall the recommendation that fees be levied for hearings, references, surplus withdrawals and wind-ups. These activities have proved to be expensive; however, until an amendment to the legislation is passed, the PCO will not recover these costs.

The Special Notice was circulated to all registrants, consultants and other interested parties on our current mailing list.

Re: Fees for Applications for Registration

The application fee for pension plan registration is increased to \$5 per member (formerly fees were \$4 per member to 500 members; plus \$1 per member in excess of 500 members).

The application for registration minimum fee is now \$200 with a maximum fee of \$10,000 (formerly the minimum fee was \$80 and the maximum fee was \$5,000).

The revised fees for application for registration apply to all plans registered with the PCO on or after December 15, 1989 - the filing date of the amendment. Regardless of the date of pension plan establishment or effectiveness, an application for registration filed with the PCO on or after December 15, 1989 will be caught by the new fees schedule.

Re: Filing Fees for Annual Information Returns

The filing fee for annual information returns is increased, consistent with the fees for application for registration, to \$5 per member with a minimum filing fee of \$200 and a maximum fee of \$10,000.

The amendment in respect of filing fees for annual information returns affects plans with fiscal years ending on or after December 31, 1989.

The penalty for late filing of annual information returns continues to be calculated at a rate of 20% of the fee payable plus interest.

PCO participates in the Toronto and Ottawa 1990 Financial Forum

The Pension Commission and the Ontario Securities Commission jointly participated once again in the fourth annual Financial Forum held in Toronto and Ottawa in February, 1990. The Financial Forum is a financial services consumer show held at the Metro Toronto Convention Centre and the Ottawa Congress Centre. The Forum is a microcosm of the financial services marketplace.

In addition to the many exhibitors and vendors selling RRSPs, securities, mutual funds, insurance, and more exotic investments, this year's participants included The Toronto Stock Exchange Mini Exchange and familiar Canadian business/media personalities who spoke on topics ranging from retirement planning to investment and tax strategies.

In 1990, the Toronto Financial Forum drew over 40,000 attendees in four days. Senior management at the PCO and the OSC are of the view that it

is valuable for regulatory authorities to be present in the financial services marketplace to raise public awareness of investor protection and retirement planning/pension issues.

At all times, PCO and OSC staff were available to respond to public enquiries and distribute communication materials. The PCO circulated a pamphlet summarizing pension plan member rights and entitlements under the PBA, 1987, and the OSC circulated its pamphlet "An Introduction to Investing in Securities" and 1989 annual report.

Compliance Assistance Guideline now available

In a notice distributed last December, the PCO advised that Compliance Assistance Guidelines will be published in 1990. Included with this first issue of the PCO Bulletin, is the first Compliance Assistance Guideline dealing with procedures for making application for pension plan registration. In April, 1990 several more Guidelines will be published and distributed to interested parties.

Don't miss this opportunity to receive future PCO publications

The February and June issues of the PCO Bulletin and Compliance Assistance Guidelines will be distributed to 10,000 plan sponsors/Administrators registered with the PCO and to interested parties on our supplementary mailing list. We are aware that some plan sponsors may not wish to receive this material and therefore, we will not be mailing to the list of registrants after June, 1990 owing to printing and mailing costs. If you are a plan sponsor or Administrator on that list and you wish to continue to receive future Bulletins and Guidelines, **please write to Mailing List Update. If you are a plan sponsor please quote the plan's provincial registration number (found on the face of the mailing label).** If you responded to a similar request in December, 1989, your name has already been added to the Bulletin and Guidelines mailing list and you may disregard this notice.

The Pension Commission of Ontario: Mandate, Background and Structure

THE PENSION COMMISSION

of Ontario was created in 1965 - by the Pension Benefits Act (PBA) to regulate and ensure minimum standards for employer-sponsored pension plans in Ontario. Key objectives of the legislation were:

- to protect vested benefits for employees terminating employment;
- to regulate the solvency of plans; and
- to regulate the investment of pension plan assets.

Since the mid '80s, the PCO has operated as an arm's length agency (a Schedule I regulatory agency) under the umbrella of the Ministry of Financial Institutions. The Chairman of the Commission reports to the Minister of Financial Institutions who accounts for the PCO in the provincial legislature and presents PCO financial estimates as a part of the Ministry's estimates.

Recently, pensions have been transformed dramatically by external forces. Pension reform was the topic of significant discussion and debate for years at the federal and provincial levels. In Ontario, discussion and events triggered the passage of the Pension Benefits Act, 1987 which continued the role of the PCO to regulate and added a new duty to the mandate: to promote the establishment, extension and improvement of pension plans throughout Ontario. In the turbulent pension climate of the late '80s, it has not been an easy objective to achieve.

Tax reform - reforms affecting tax-assisted retirement planning - was unveiled in December of 1989 with proposals for a fairer and more equitable tax assistance scheme. This will make a significant difference to many Canadians; the federal government has, at last, vastly improved the tax assistance tool to enable Canadians to build sturdier foundations for their own retirement. These measures have been generally well received by the public; nevertheless, tax reform appears to be in conflict with provincial pension legislation and the resolution of the conflict has yet to be addressed.

Although the economy of the early '80s was bleak, recovery and the longest, most sustained business cycle of the post-war period brought great prosperity to many by the end of the decade. In the '70s, pension funds were occasionally in a deficit position owing to the doldrums of the capital markets of the day. To remedy this, plan sponsors were required to top up pension funds to bring them into compliance with the funding rules of the legislation. Conversely, the high performance of capital markets in the last decade created surplus issues that continue to challenge plan sponsors, members and regulators.

In many instances, the market value of invested pension assets ballooned, registering actuarial gains and resulting in pension assets in excess of those needed to meet the plan sponsor's promise to provide pension benefits (the liabilities of the pension plan). This forced parties to question the ownership of the "surplus" or excess actuarial gain as it is called in a going concern business situation. The ownership debate continues, marked it seems, more by different social and economic philosophies than anything else. At the present time, anxious parties must resolve the question of surplus ownership through the courts to establish clear entitlement. Others in continuing plans must await the lifting of a moratorium on surplus withdrawal imposed in 1986 by the Ontario government. It seems the basic misunderstanding arises because from the outset, parties to the plans have failed to specifically address the issues relating to the pension debt and surplus withdrawal in a straightforward manner.

After the PBA, 1987 was proclaimed, the government undertook to revisit the legislation to clarify some ambiguities that had arisen as a result of pension reform. The government circulated draft proposals in

March 1989 to encourage public consultation in the policy-making process and to amend the PBA, 1987. Some key recommendations applied to solvency valuation, family law issues, ways to improve administration and enforcement, and the indexing issue. A bill is expected in the Ontario legislature during 1990.

In the face of all these changes: major reforms, jurisdictional tensions, federal tax reform, and unforeseen economic consequences, the PCO has undergone significant structural and organizational changes. Indeed, the PCO is planning for even greater change in the way it regulates; for instance, a major information technology program is being implemented to bring the agency into the computer age with promising possibilities for improving collection, capture and processing of data. One key objective is to substantially streamline compliance requirements with a single, annual filing to include: the annual information return, actuarial report, audited financial statements of the fund and the PBGF assessment form. To further alleviate administrative burden, the Commission is studying ways to receive filed documents using electronic capabilities.

At the same time, the quasi-judicial tribunal performing its adjudicative role is in the process of reviewing and clarifying procedural practices. These are expected to be published in future issues of the PCO Bulletin. Pension reform has been the catalyst for significant restructuring of the PCO at all levels.

The structure of the PCO

The PCO operates on two distinct levels. The staff of the PCO are responsible for administering the legislation. The nine-member Commission provides an adjudicative role: it meets regularly to consider matters before it and acts as an appeal body from decisions made by the Superintendent of Pensions. Plan sponsors and members may also come before the Commission to settle contentious matters. A party to a proceeding before the Commission can appeal decisions of the Commission to the Divisional Court.

(a) The Commission

The members form an autonomous statutory tribunal known as the Commission and are appointed by order-in-council. The Commission is composed of a Chairman, Vice-Chairman and up to seven Commissioners serving on a part-time basis. Commissioners are drawn from fields related to the pension industry including actuarial, accounting, legal and economics, and represent consumer advocacy and union concerns. Ultimate responsibility for the Commission lies with the Chairman.

In addition to its role as an administrative tribunal, the Commission advises on proposed policies and makes recommendations to the government on changes to the legislation. Five members constitute a quorum. The Commission meets at least monthly and convenes periodically as a full body or in panels for hearings when required. Staff support to the Commission is provided by the Office of the Superintendent and the Secretariat.

(b) The Staff of the PCO

Staff form an administrative agency composed of approximately 60 professional, management, financial officers and support staff serving the day-to-day operations of the PCO. The Superintendent of Pensions is responsible for staff and for the activities of the three operating branches, namely, the Secretariat, the Pension Plans Branch and the Operations Branch. The Superintendent participates in policy development and also represents the PCO at the provincial, federal and international levels.

The Secretariat is the smallest of the branches and has carriage for the policy development process. The Secretariat includes 10 staff: an actuary, an investment policy analyst, an auditor, and staff performing the research and communications function.

The Pension Plans Branch is responsible for ensuring that all pension plans registered in Ontario comply with the legislation. The Branch is subdivided into three sections by type of plan: the defined benefit section, the defined contribution section and the special cases section. Pension officers and assistants report to managers and each is specialized with a case load based on the type of plan.

The Operations Branch provides for receipt and processing of all documentation filed with the PCO; it includes a new information systems services group and provides finance and administration services for the PCO. The Information Systems Services Group (ISSG) will assume responsibility for implementation of the information technology plan - a major initiative representing a significant commitment of financial resources to strengthen compliance and streamline administration in a technologically sophisticated industry.

Commonly Asked Questions

This feature will appear in each issue of the PCO Bulletin.

Q. A plan member asks: I began plan membership in 1986 and am terminating employment in 1990. Some of my pension money is locked-in and some is not. Why is this?

A. When the PBA, 1987 became law on January 1, 1988, both employer and employee contributions made after January 1, 1987 are vested and locked-in after 2 years of plan membership and may only be used to provide a pension at age 65. Benefits earned prior to 1987 (if not vested and locked-in earlier because of plan provisions) become locked-in when the member reaches age 45 and has 10 years of service. These pre-1987 employee contributions may be refunded.

Q. A banker asks: Can I rollover the funds from a locked-in RRSP to a RRIF? If not, why?

A. No. The proceeds from a locked-in RRSP must be used to provide a life annuity. All locked-in monies that originated from a pension plan must be paid out in the form of a life annuity - a series of regular, periodic payments that last until the person dies (with a reduced amount to a surviving spouse if applicable until the spouse's death). This is intended to ensure there will be regular payments a retired person will receive when earnings have stopped. Since one can outlive a RRIF, transferring a locked-in RRSP to a RRIF is not currently permitted in any Canadian jurisdiction.

Q. A plan member asks: What is the purpose of the "joint and survivor" provision? Can it be waived?

A. The purpose of this provision is to ensure there is continuing pension income for a surviving spouse when the pensioner dies. The widow or widower must receive an amount not less than 60% of the monthly pension payable prior to the pensioner's death. If the marriage breaks down, the joint and survivor protection can be waived by filing a court order or a domestic contract. In addition, a spouse can give up his or her joint and survivor rights at the time of the member's retirement by signing a waiver form. Both spouses must sign the form and be fully informed of what rights are being waived.

Q. A consultant asks: What is the purpose of an Advisory Committee? Is one required?

A. When pension plan members do not have direct involvement in the administration of a plan, establishment of an Advisory Committee provides a more formal structure for plan members and former members to monitor the administration of the plan and fund, recommend changes to the plan administrator, and generally promote awareness and understanding of the plan to members and those receiving benefits from it. It isn't required, but if members decide to establish such a committee, each class of employees in the plan as well as former members, are entitled to have a representative.

Q. A plan sponsor asks: We have a plan member who wants to drop out of the plan and take his money, but he is not terminating employment. Are we permitted to do this?

A. A plan member may suspend active membership in a pension plan if the pension plan is written to provide for such a suspension. However, according to the rules of the PBA, 1987, ss.64(1) no money may be refunded or transferred out of the plan until he terminates employment.

Q. An insurance company asks: We complete the Annual Information Returns (AIRs) for our clients. Where can we obtain copies so that we can complete them in advance?

A. The Operations Branch of the Pension Commission automatically mails AIRs to plan sponsors/Administrators before the pension plan's year end. These originals are not available before that time, and they can only be sent to the addressee.

Q. A plan sponsor asks: I did not receive my Annual Information Return by the plan's year end. How can I get one?

A. Normally AIRs are prepared by the government's central computer. If you did not receive your Annual Information Return prior to your plan's year end, call the Operations Branch at 972-5784 and give them your plan's registration number. An AIR will be manually prepared and sent out.

How to Obtain Information Under Freedom of Information and Protection of Privacy

THE LAW IN ONTARIO, in keeping with a philosophy of openness and access to information maintained by the government, provides that such information may be accessed by a requestor if the request meets the standards of the Freedom of Information and Protection of Privacy Act, 1987 (FOIPOP).

People may apply under FOIPOP through a process controlled by the FOIPOP Co-ordinators in each government ministry. In the case of information maintained by the Pension Commission, requestors will make application through the Ministry of Financial Institutions FOIPOP Office at 10 Wellesley Street East, 6th Floor, Toronto, Ontario M7A 2H8. The role of the Co-ordinator is to assist you in making your request, to determine if the information requested exists, and if so, whether the information requested can be disclosed in light of legal precedents and information and privacy issues.

Upon receipt of a request for information, the Co-ordinator will liaise with the PCO staff person appointed as the Liaison Officer. The Officer's function is to clarify requirements and determine the accessibility of the information requested. The Officer may also be asked by the Co-ordinator to assess time and resources needed to fulfill a request, but the Officer will not make any judgements concerning the merit of the request or offer any recommendations.

In turn, the Co-ordinator will advise the requestor whether the information can be disclosed and if any identifying information will be severed from the documents before its release. The Co-ordinator will also advise whether any charges (the legislation provides for charging costs) will be incurred. On the basis of this information, the requestor will advise the Co-ordinator whether or not to proceed with the preparation of information requested.

In certain instances, it may be practical to contact the FOIPOP Liaison Officer at the PCO directly before initiating a request for information to ensure the information requirements are clearly expressed and understood.

For specific details for making a formal request, please refer to the FOIPOP Interim Administrative

Practice on page 8, and the summary of the decision of the Information and Privacy Commissioner in respect of Appeal Number 880334 (Lerner Decision) in the Decisions section of this Bulletin.

Statements of Investment Policies and Goals:

How to Deal with the Conflict of Interest Requirement

MANY ADMINISTRATORS are concerned with the requirement to state existing or potential conflicts of interest and outline a mechanism for dealing with them particularly when some pension funds are completely invested in pooled funds.

The reality is that anyone who administers and is responsible for investing large reserves of money, or those with agents acting on their behalf, can have conflicts of interest. It is also true that some people are not even aware of their conflicts. It is necessary for Administrators to scrutinize the nature of their personal-professional associations with people influencing investment decisions. The requirements in the legislation to address conflicts of interest and to outline a plan for dealing with them are appropriate and serve to remind all parties of the trust and fiduciary duties that reside with Administrators and their agents.

The following approach is applicable equally to Administrators with pension funds completely invested in pooled funds and Administrators with autonomous investment funds:

- The policy regarding conflict of interest should list all persons who are likely to be involved in the decision-making process: the Administrator, any agents such as investment managers, custodians, actuaries, consultants and employees of the Administrator.
- The conflict of interest policy should identify the possible conflicts of interest that might arise from knowledge of, or involvement in the management of the plan and fund. For instance, an individual might declare personal relationships or business associations that are non-arm's length where privileged knowledge of certain investment actions could personally enrich the individual and the associate.
- The disclosure mechanism will outline when a conflict of interest will be disclosed, to whom and in what fashion; the disclosure mechanism will also deal with the conduct of the individual until the conflict is resolved. For instance, the individual will abstain from discussion and voting on decisions, or remove oneself from the decision-making process, or from otherwise influencing investment decisions.

Depending on the specific arrangements an Administrator has undertaken for the management of the

pension fund's investments, a conflict of interest policy that addresses the points mentioned above and makes frank disclosure will be sufficient to comply with the PBA, 1987 and regulation.

Administrative Practices

THESE ARE PRACTICES considered and adopted by the staff of the PCO under the authority of the Superintendent of Pensions, to facilitate pension plan administration externally, and facilitate processing and compliance with the legislation internally at the PCO.

Change of carrier of plan assets

Staff of the PCO have adopted an administrative practice respecting the transfer of custodial pension assets between financial institutions. It is no longer a requirement that approval be obtained prior to the transfer (except under sections 81 or 82 of the PBA, 1987). Instead, the Administrator is required only to inform the PCO of the transfer.

This can be achieved by sending to the PCO: (1) an explanatory letter, and (2) a copy of the document which instructs the institution (from which the funds are being transferred) to transfer the funds.

When the carrier is named as part of the plan text, an amendment to the plan will be required. In this case, a copy of the new policy or trust agreement established by the new carrier must be filed with the PCO.

Deadlines for filing annual information returns with fees

There has been some confusion lately respecting deadlines for filing annual information returns and fees in the pension consulting community.

Section 21 of the PBA, 1987 requires the Administrator to file an annual information return yearly and pay a prescribed filing fee; section 15 of the regulation specifies the Administrator file the return not later than six months after the fiscal year end of the pension plan. Subsection 15(4) of the regulation further states that an annual information return filed after this date shall be subject to a late filing fee.

If documents are not filed **on the due date**, they will be considered to be late. As stated in subsection 15(4), a late penalty will be imposed and is calculated at a rate of 20% of the filing fee plus interest. Administrators must assume responsibility for ensuring that **documents are filed before or on the due date**. As a matter of administrative practice, materials post-marked before or on the due date will be considered filed by the due date.

Freedom of Information and Protection of Privacy (Interim Administrative Practice)

In light of Order 125 issued by the Information and Privacy Commissioner (described under the Decisions section in this issue) and the requirements of the Freedom of Information and Protection of Privacy Act, 1987 (FOIPOP), the PCO has structured an interim administrative practice to comply with requests by the public under section 17 of FOIPOP for third party information maintained in PCO files.

Section 17 reads as follows:

(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

(2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure.

PCO Procedure

When PCO staff receive a request for access to information under FOIPOP, through the Ministry of Financial Institutions' FOIPOP Office, an initial determination will be made whether exemption from disclosure should be sought under FOIPOP. If the determination is that section 17 does not apply and there are no other grounds for an exemption, the request will be complied with and the information released.

If the determination is that there may be grounds for an exemption from disclosure under section 17, notice will be sent to the affected party as required under section 28: the party will be informed that a request for information has been made.

The notice will contain:

- a statement that the PCO intends to release a document that may affect their interest;
- a description of the contents of the document; and

- a statement that the party has the right to make representations within 20 days after notice has been given as to whether or not the information should be disclosed.

A decision whether to grant or deny access to the information in whole or in part will be made in 30 days after the above notice is sent.

If you are the affected party, please keep the following considerations in mind:

- filed documents with the PCO are generally considered to be available to the public unless exempted by a provision of FOIPOP; simply marking a document "confidential" does not make it so; you may wish to consult with your legal counsel for advice on specific filings; and
- the Minister or his delegate makes the decision with respect to any access request. His decision may be appealed to the Information and Privacy Commissioner; the Commissioner, as the final authority, will determine whether a document will be released under FOIPOP.

The foregoing administrative practice deals with documents filed with the PCO to which section 17 of FOIPOP may apply. Registrants filing documents who believe that confidentiality should be respected for other reasons, such as personal privacy, should indicate such on the face of the document.

Actuarial Assumptions Guidelines for Pension Officers

Approval of Actuarial Reports - Final Average Plans (Excluding Designated Plans)

THE ACTUARIAL ASSUMPTIONS guidelines have been prepared to facilitate the process for approving actuarial reports. They are not intended to replace generally accepted actuarial principles.

Not all assumptions are addressed in the guidelines, for instance, inflation assumptions. PCO staff reserve the right to require justification of assumptions not specified in the guidelines. Furthermore, guidelines will be developed for other actuarial assumptions as required.

If actuarial reports are prepared within the limitations as set out in these guidelines, processing by pension officers generally will be routine. However, if the assumptions of the actuarial reports are outside the guidelines, the report will be referred to the actuarial staff for review.

There is no formal guideline on acceptable actuarial assumptions by the actuarial staff; however, the following principles are applicable:

1. The valuation must be done in accordance with generally accepted actuarial principles and practice, and must be appropriate in the circumstances.

2. Although pension officers can accept only valuations based on the projected accrued benefit cost method, the actuarial staff may accept reports based on any valuation method generally accepted in Canada.
3. For going concern valuations, the actuarial staff may accept any set of actuarial assumptions which, in the aggregate, produce results that are reasonably consistent with a set of assumptions that is within these guidelines.
4. If the filing actuary can provide necessary justification, the actuarial staff may accept assumptions which are outside these guidelines, but may be considered appropriate when compared with the expected experience of the pension plan.
5. For solvency valuations, the actuarial staff may accept any set of actuarial assumptions which produces results consistent with the requirement of subsection 25(2) of the regulation.

If issues cannot be resolved between the actuarial staff of the PCO and the filing actuary, the report will be referred to the Commission pursuant to section 89 of the PBA, 1987. Prior to making its decision, the Commission may invite written submissions from the filing actuary. The Commission may also refer issues to the appropriate committee of the Canadian Institute of Actuaries to obtain its view prior to making a decision. Alternatively, the filing actuary may seek the views of the appropriate CIA committee and include this in the submission to the Commission. A decision of the Commission may be appealed to the Divisional Court.

Enquiries from filing actuaries should be directed to the actuarial staff. We encourage filing actuaries to consult with the actuarial staff prior to filing the actuarial report if they have any questions or concerns.

The guidelines take immediate effect. Comments are welcome and will be considered in the context of necessary or desirable future amendments to these guidelines.

Guidelines for designated plans, flat benefit and career average plans are expected in 1990.

The Guidelines are as follows:

I—Going Concern Valuation

A Valuation of Liabilities

Pension officers may approve a valuation of liabilities if all the requirements in this section are met.

1. Actuarial Cost Method

Pension officers may approve a valuation of liabilities based upon the projected accrued benefit cost method (projected unit credit cost method). If another actuarial cost method is used, the valuation shall be referred to the actuarial staff for review.

2. Economic Assumptions

(a) Interest Assumption

The interest assumption shall not be higher than 8%.

(b) Salary Assumption

For final average plans the future salary increase must be recognized. For any assumed interest rate, the total rate of salary growth, including inflation, productivity and merit increases, shall not be less than the following values:

<u>Interest Assumption</u>	<u>Minimum Salary Growth Rate</u>
8.0%	7%
7.5	6
7	5
6.5	4
6	3

(c) Future Increase in CPP and OAS Benefits

Future increases shall not be greater than the assumed salary growth rate.

(d) Expense Assumption

No expense assumption is required.

3. Other Experience Assumptions

(a) Mortality Tables

Pension officers may approve a valuation of liabilities based on any one of the following mortality tables:

- 1983 Group Annuity Mortality Table
- 1983 Group Annuity Mortality Table with the 10% Margin Removed
- Progressive Annuity Table
- 1971 Group Annuity Table
- 1971 TPF & C Forecast Mortality Table
- Wyatt Company table based on 1971-GA (projection to 1976 and later years)
- 1986 Wyatt Mortality Table
- GBB Mortality Table (1974 and later years)

Age set-back is permitted. If age set-forward is assumed, the report shall be referred to the actuarial staff.

The mortality tables used shall be either on a sex distinct basis or with male mortality rates set back at least 4 years for females.

(b) Termination Rates

The termination rates by age shall not exceed the Medium Termination Rate in the Second Report of the Ontario Committee on Portable Pensions. A copy of the table appears as an appendix on page 20.

(c) Early Retirement Assumptions

If there are significant subsidies for early retirement benefits and bridging benefits,

the assumed retirement age shall not be greater than 2 years prior to normal retirement age.

Pension plans that provide for benefit reduction of greater than 3% per year prior to normal retirement date are not considered to have significant subsidies for early retirement benefits if no other early retirement benefits or bridging benefits are available. For these pension plans, the assumed retirement age should be no greater than the following values:

<u>Early Retirement Adjustment</u>	<u>Assumed Retirement Age Relative to Normal Retirement Age</u>
6% or greater	Normal Retirement Age (NRA)
between 3 and 6%	NRA minus 1 year
3% or less	NRA minus 2 years

If a range of probability of retirement is given on an age-by-age basis, the average age of retirement shall not be greater than the permitted values indicated above.

If a service test is required for subsidized early retirement, the lower retirement age assumption is necessary only for those members eligible for the subsidy.

(d) Disability Rate

For those pension plans with disability benefits, there shall be reasonable allowances for the cost of disability.

No allowance for disability is necessary if the benefit is simply accrual of pension service.

(e) General

Pension officers shall always check the actuarial reports for experience gain or loss related to death, termination, retirement and disability. If, in the aggregate, there is a net experience loss related to these items, the reports shall be referred to the actuarial staff for review.

B Asset Valuation Method

Pension officers shall refer the valuation to the actuarial staff under any of the following conditions:

- The actuarial reports use the discounted cash flow method for the valuation of assets.
- The method of asset valuation is changed from the previous actuarial report.
- The value of the assets is averaged over a period of more than 5 years.
- The actuarial value of the assets is more than 105% of the market value of the assets.

II—Solvency Valuation

A Valuation of Liabilities

Pension officers may approve a solvency valuation if all the requirements in this section are met.

1. Actuarial Cost Method

Only the accrued benefit cost method is permitted.

2. Economic Assumptions

Either one of the two following options is permitted:

First Option

(a) Interest Assumption

The interest assumption shall not be higher than the average bond yield of the over 10 years Government of Canada securities (CANSIM B14013) for 15 years and 6% thereafter.

(b) Salary Assumptions

No salary increase assumption is required.

(c) Inflation, Future Increase in CPP and OAS Benefits

No inflation assumption is required under the current regulation.

(d) Expense Assumption

No expense assumption is required.

Second Option

(a) Interest Assumption

The interest assumption shall not be higher than the average bond yield of the weighted long-term provincial securities (CANSIM B14047) for 20 years and 6% thereafter.

(b) Salary Assumptions

No salary increase assumption is required.

(c) Future Increase in CPP and OAS Benefits

No inflation assumption is required under the current regulation.

(d) Expense Assumption

An expense amount of \$500 per member, including retirees and deferred vested members, is required.

3. Other Experience Assumptions

(a) Mortality Tables

Only the 1983 Group Annuity Mortality Table with the margin is accepted, either on the sex distinct basis or with male mortality rates set back at least 6 years for females.

(b) Termination Rates

No termination rate is permitted.

(c) Early Retirement Assumptions

Employees who meet the requirement of section 75 of the Act must be assumed to retire at such an age that will result in the highest liability.

(d) Disability Rate

No disability assumption is required.

B Asset Valuation Method

The asset valuation method should be in accordance with the regulation. If the method of asset valuation is changed from the previous actuarial report, it shall be referred to the actuarial staff.

Decisions

IN THE MATTER OF the Pensions Benefit Act, 1987;

AND IN THE MATTER OF an application for surplus withdrawal of Otis Canada Inc. in respect of the pension plan for **Steel Workers Local 7062**, pursuant to subsection 7a(2)(c) of the Ontario Regulation 708/87 as amended, requesting the Commission to file with the Court under subsection 79(1) of the Act, a consent in respect of the Otis Canada Incorporated's proposed application to the Supreme Court of Ontario to authorize distribution of \$6,700,000 to the Company.

Hearing Dates:

November 17, 1988
February 9, 1989
February 16, 1989
March 29, 1989
March 30, 1989
June 12, 1989
June 13, 1989
June 14, 1989
October 5, 1989
October 6, 1989

Commission Counsel:

Mr. P. Cavalluzzo
Mr. J. Hayes

*Counsel for the
Superintendent:*

Ms. S. Rowland
Mr. P. Dempsey

*Counsel for Otis
Canada Inc.:*

Mr. J. Campion
Mr. D. Vincent

*Counsel for the United Steel
Workers of America, Local
7062:*

Mr. B. Shell

*Employees/retirees of Otis
Canada Inc.:*

Mr. R. Boulakia
Mr. H. Mackenzie
Mr. L. Simonffy

*Representatives of the ad hoc
committee:*

Mr. J. Dykes
Mr. M. Hryciuk

Mr. M. Moran
Mr. R. McCabe

Before:

Mr. J. Kruger
Presiding Member
Ms. L. Gordon
Mr. D. Collins
Prof. E. Gillese
Mr. J. St. Georges
Mr. D. Stouffer
Ms. M. Townson

Judgment rendered:

February 8th, 1990

FACTS

Otis Canada Inc. ("Otis") sought an appearance before the Pension Commission of Ontario (the "Commission") pursuant to subsections 79(1) and 80(4) of the Pension Benefits Act, S.O. 1987, c.35 (the "Act") and subsection 7a(2)(c) of the Ontario Regulation 708/87 (the "Regulation"). Otis requested the appearance because it needed Commission consent to withdraw \$6.7 million of surplus funds from the Otis pension plan for the United Steel Workers of America, Local 7062 ("Otis Steel Workers Plan"), which was wound up effective October 2, 1987.

The Otis Steel Workers Plan was established with an effective date of February 1, 1963. It was a non-contributory plan to which Otis alone contributed until it ceased operation of its manufacturing plant in Hamilton in the fall of 1987. On wind-up Otis provided all employees with their accumulated pension rights under the Otis Steel Workers Plan and the Act. Pursuant to a negotiated Closing Agreement with the Steel Workers of America Local 7062 it also provided improvements to employee benefits.

By letter to the Superintendent of Pensions (the "Superintendent") dated January 5, 1988, Otis informed the Superintendent that all members had received their entitlements under the Steel Workers Plan and submitted a final wind-up report. On August 2, 1988, a supplemental wind-up report was submitted, by Otis, for consideration by

the Superintendent.

By letter dated November 8, 1988, the Superintendent confirmed that the wind-up report, as revised, complied with the requirements of the Act and Regulations. In a memorandum dated September 30, 1988 (Exhibit B-50) the Staff of the Commission recommended to the Chairman, Vice-Chairman and members of the Commission:

"That in accordance with subsection 7a(2)(c) of Ontario Regulations 708/87, the Commission file with the Court a consent under subsection 79(1) of the Act, to permit the court to deal with the company's application to the court to authorize distribution of the surplus under the plan to the company."

At the appearance, evidence was given on behalf of the Superintendent showing that its decision had been made on the basis of the documents which it had in its possession and which, it became clear from the evidence, were incomplete. The Superintendent's position upon learning of the gaps in the documentation was best summarized in this exchange (transcript 1610):

Q. But your evidence is very clear that there were certain documents that you did not have quite apart from the [plan] text. I can't remember your exact words but I believe you said, were you in receipt of those, you would have had concerns.

A. That's correct.

The appearance before the Commission commenced on Thursday, the 17th day of November, 1988 and continued at various points thereafter. An issue arose as to the status of the Superintendent during the second day of the appearance. The Commission, in a ruling dated the 13th day of June, 1989, defined the role of the Superintendent in the following terms:

"We find it unnecessary to decide for all purposes whether the Superintendent has full status or limited intervenor rights only. Because the members of the pension plan are represented by counsel, for the purposes of this appearance it is sufficient to recognize the Superintendent's status to lead evidence, cross-examine witnesses and make argument in relation to matters that form the basis of his decision on the wind-up report and the staff report submitted to the Commission."

The Superintendent thereafter took part in the appearance, in accordance with the terms of the order as set out above.

As the applicant, Otis had to satisfy the Commission that each of subsections (a) through (d) of subsection 80(4) had been met. Subsection 80(4) provides:

The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless,

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for payment of surplus to the employer on the wind-up of the pension plan;
- (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan; and
- (d) the applicant and pension plan comply with all other requirements prescribed under the other sections of this Act in the respect of payment of surplus monies out of the pension fund.

The initial wind-up report prepared on behalf of Otis by GBB Associates Ltd. (Exhibit A-29), the supplemental wind-up report (Exhibit A-30) and the evidence of Mr. Ronald Davies, an actuary and employee of GBB Associates Ltd. satisfied the Commission that the pension plan had a surplus, thereby meeting the requirement of subsection 80(4)(a). In addition, that evidence met the requirements of subsection 80(4)(c).

The testimony of Mr. Nurez Jiwani, Manager of Defined Benefit Plans for the Pension Commission of Ontario, and the Staff Report (Exhibit B-50) discussed above, satisfies the Commission that subsection 80(4)(d) has been met as well.

Subsection 80(4)(b) proved more problematic. To reiterate, it requires that:

the pension plan provides for payment of surplus to the employer on a wind-up of the pension plan. To determine whether the requirements of subsection of 80(4)(b) had been met, the Commission had first to determine what "the pension plan" was. (emphasis added)

ISSUE NO. 1

What is "the pension plan" within the meaning of subsection 80(4)(b)? Once it is determined what the pension plan is, it is necessary to determine whether it "provides for payment of surplus to the employer".

THE PENSION PLAN

"Pension Plan" is defined in Section 1 of the Act as "a plan organized and administered to provide pensions for employees,...".

There is no statutory or common law requirement that a pension plan be in writing. The evidence is uncontroverted that a pension plan was in existence in February of 1963: notices were sent to the employees

advising them that a pension plan was in operation effective February 1963, public statements were made by Otis to the effect that such a plan had been put into effect and all the evidence of the various witnesses, including that of Mr. Droughan, witness for Otis, acknowledged that the plan was in existence as at February of 1963.

Thus, on a plain reading of the definition, "the pension plan" was the plan operational at the Otis plant in Hamilton in 1963. While the existence of the pension plan is clear, its terms are not. The difficulty arises because there was no written version of the plan produced contemporaneously with its introduction in 1963. Indeed, the first full plan text produced in evidence before the Commission is dated April 1, 1966 (the "1966 Plan Text", Exhibit A-10). At the bottom of page 7 of the 1977 Plan Text is the following recitation:

"The foregoing is a true description of the Non-Contributory Pension Plan of Otis Elevator Company Limited as effected on February 1, 1963 and as amended on January 1, 1965 by addition of paragraph 2 of Article XI and on January 1, 1966 increasing under Article III the rate of pension credit for service after that date."

The recitation was signed Mr. D.D. Panabaker, then Secretary-Treasurer of Otis who, unfortunately, was unable to give evidence at the appearance due to much advanced age. Paragraph 5 of Article XIII of the 1966 Plan Text reads as follows:

"If, after the pensions recited in paragraph 2 of this Article have been fully provided in accordance with paragraph 3 of this Article... there remains a balance in the deposit fund under the Contract, such balance shall revert to the Company."

All subsequent pension plan texts included such reversionary clauses.

Could the Commission accept the 1966 Plan Text as representative of "the pension plan"? If the 1966 Plan Text did embody the pension plan as at 1963, then subsection 80(4)(b) had been met as it, and all subsequent plan texts, clearly provided for payment of surplus to Otis. In order for the Commission to accept the 1966 Plan Text, however, it had to be assured that the 1966 document was a true reflection of the terms of the plan as at February of 1963.

Unfortunately, there was no direct evidence to prove whether the terms of the 1966 Plan Text were the same as those under which the plan operated from 1963 onward.

Mr. Droughan admitted that he was not the architect of, and did not in fact, participate in the development of the 1966 Plan Text. Mr. Droughan was a Systems Analyst and Works Accountant until 1965, Controller in 1965 and then Vice-President of Finance. At no time was he directly involved in the drawing up or implementation of the Otis pension plan. His belief that the 1966 Plan Text was a true reflection of the plan as at February 1, 1963 was based on the recitation at the foot of the 1966 Plan Text which has been quoted above.

The only direct evidence before the Commission of the terms of the 1963 plan were:

- a notice from Otis to its employees dated February 1963;
- a Booklet on the pension plan given to the employees in 1964 ("the 1964 Employee Booklet"); and
- The Sun Life Assurance Policy No. 8924G.

(These three documents together are referred to as "the plan documents".)

The Commission accepts the plan documents as the best evidence of the terms of the pension plan in 1963. There is complete silence in the plan documents as to entitlement to surplus. "Silence" as to surplus in the recent jurisprudence has been used to describe the situation where there is no clause expressly dealing with rights to surplus. (See, for example, *Re National Automobile Aerospace and Agricultural Implement Workers Union of Canada et al. and White Farm Manufacturing Canada Ltd. et al.* (1989), 66 O.R. (2d) 35.) But, in such cases, there has been language in the plan documents to assist the court in determining the intention of the settlor at the time.

The typical language in favour of employees includes phrases such as "No part of the capital or income of the fund shall ever revert to the Company ...", or, the monies are to be used "for the exclusive benefit of the employees and former employees under the plan except as therein and herein provided". Or, again, "no such amendment shall authorize or permit any part of the capital or income of the fund to revert to the Company or be used for or diverted to purposes other than for the exclusive benefit of the employees and former employees ...".

Language favouring the employer has been drawn in specific terms such as "that portion of the trust fund not required for the satisfaction of liabilities to members and beneficiaries shall, upon termination of the plan, revert to the Company". In the plan documents which the Commission found to represent the terms of the plan as at February 1963 there is true silence, that is, no language whatsoever to indicate who was to take any surplus that might accrue after the defined benefits had been paid.

The Commission therefore sought to find evidence of the intention of Otis in relation to surplus as at February 1963. Unfortunately, no such evidence was forthcoming. Voluminous documentation was provided which was scrutinized carefully. Documents embodying previous plans contained indications that Otis was aware of the surplus issue but some of the previous plans indicated that Otis would lay claim to surplus and others that it would not. In the end, the Commission was unable to accept any of the evidence tendered about past plans as it was unreliable when attempting to determine Otis' intention in relation to the Otis Steel Workers Plan.

In short, there was a void in the evidence as to Otis' intention *vis à vis* the surplus and there was a void in the jurisprudence on the issue of how to deal with true silence in plan documentation. In the absence of such evidence and in light of the fact that the plan documentation differed materially from the 1966 Plan Text, the

Commission was unable to accept the 1966 Plan Text as evidence of “the pension plan”.

ISSUE NO. 2

The issue thus became: did Otis have the power or right to insert a surplus reversion clause in the 1966 Plan Text? If so, did it properly exercise such power or right?

INSERTION OF THE SURPLUS REVERSION CLAUSE

Whether Otis had the right or power to insert the surplus reversion clause into the 1966 Plan Text depends upon the legal characterization of what occurred in 1963. Three possibilities exist.

First, there could have been an incomplete declaration of trust in 1963. That is, the quantum of beneficial interest that was declared was that portion of the trust res relating to the defined benefits in favour of the employees. As nothing was said about amounts greater than those needed to provide for the defined benefits, on this view there was a resulting trust of the undeclared portion of the trust funds and it would be the settlor's (Otis') right to do with that portion as it pleased. The surplus reversion clause in the 1966 Plan Text, so the argument runs, is simply a declaration of trust over that portion of the trust res that had previously been undeclared. No formalities are required for the declaration of a trust and thus Otis had the right to insert the surplus reversionary clause.

The second view is based on the same assumption, namely, that the declaration of trust was initially incomplete. Under the terms of the 1964 Employee Booklet, section 7 gave Otis the power to alter in the following terms:

7. ALTERATION TO PLAN

The Company intends to continue this plan indefinitely. However, it must of necessity reserve the right to alter, suspend or discontinue the plan at any time.

The alteration or discontinuance of the plan shall not affect the retirement incomes which have been fully paid for by the contribution of the members and the Company prior to the date of alteration or discontinuance. (emphasis added)

Does the alteration clause empower Otis to insert a surplus reversion clause? That depends upon whether the surplus reversion clause amounted to a partial revocation. For it to amount to a partial revocation, one would have to be of the view that the surplus had been declared initially (either expressly or impliedly) to be in favour of the employees. That view is explored in the third option below. Because there was total silence on entitlement, and because the intent of the settlor (Otis) cannot be determined, the common law doctrine of resulting trust would fill the void by raising the presumption that ownership of any of the trust corpus in excess of the amount necessary to fund the defined benefit obligations lay in Otis. The surplus reversion clause would then not amount to a partial revocation. Rather, it was a clarification of ownership or, possibly, a declaration as to ownership of the unexpended portion of then trust funds. It simply spelled out the unwritten entitlement of Otis to the surplus.

“Alteration” is defined in Black’s law dictionary as:

“to make a change in; to modify; to vary in some degree; to change some of the elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. To change partially. To change in one or more respects, but without destruction of the existence or identity of the thing changed; to increase or diminish.”

The word “alter” is usefully compared to the word “amend” which means “to improve; to change for the better....”. There is no need for an alteration to be an improvement. Does the word “alter” encompass “clarification” or “declaration”? On the definition it would seem so.

The 1964 Employee Booklet does not stipulate how an alteration is to be made. The only argument raised as to the validity of the alteration was based on clause 1 of the General Provisions of the Sun Life Agreement 89246 which required that all amendments to the plan be filed with Sun Life. As Sun Life prepared the 1966 Plan Text, the alteration must have been “filed” with it, thus the Commission accepts that if any formalities were required for the alteration, Otis complied with the same. It should be noted, however, that there is nothing in the evidence as to who proposed the alteration, when it was drafted, or how it got into Sun Life’s hands.

The third option is based on the view that a trust having been established in favour of the employees, the fruits of the trust go with the trust res. On this view, the insertion of a surplus reversion clause in the 1966 Plan Text amounts to a partial revocation of trust. The Law of Trusts in Canada, D.W.M. Waters (2nd Edition) 1984 discusses revocation in these terms at page 715:

“... if the trust instrument does not give permission, the beneficiaries of the trust may consent to such intended activity on the part of the trustees...but the crucial factor for the fiduciary is that the consent must have been given before the position is taken up, or the act is done, which later alleged to have breached the conflict of interest and duty rules.”

And at page 710:

“It is fundamental principle of every developed legal system that one who undertakes a task on behalf of another must act exclusively for the benefit of the other, putting his own interest completely aside”.

The alteration clause, as set out above, does not specifically empower the trustee (Otis) to revoke and therefore,

in the absence of informed consent by all the beneficiaries, Otis was precluded from inserting such a clause.

All three views are defensible, given the inadequacies of the evidence and the total absence of language one way or the other in the plan documents to assist the Commission in determining intention. The Commission is mindful, however, of the fact that it has an obligation to come to a decision on whether the requirements of subsection 80(4)(b) have been met.

Subject to the following sentence, the Commission finds that the language of the plan documents spells out the quantum of beneficial entitlement in the employees, that the doctrine of resulting trust entitles Otis to insert the surplus reversion clause and that the contractual right to alter further entitled Otis to create the 1966 Plan Text as it did. The Commission, however, makes no finding as to ownership in coming to the view that subsection 80(4)(b) has been met.

ISSUE NO. 3

Subsection 80(8) of the Act provides that:

"The Commission may attach such conditions and limitations to its consent under this section as the Commission considers necessary in the circumstances."

Having arrived at the view that subsections 80(4)(a) through (d) had been met, the Commission invited and received written argument from all parties on the applicability of subsection 80(8) of the Act.

The Commission was guided by a number of principles in determining the breadth of its discretion under subsection 80(8). They were: the subsection conferred a statutory power upon the Commission by use of the word "may". In such circumstances the power can only be validly exercised in strict compliance with the words contained in the statute. The Commission found that the words "necessary in the circumstances" limited the exercise of its discretion to a consideration of individual circumstances related to the case at hand. Thus, the Commission rejects the proposition that in considering the exercise of its discretion under subsection 80(8) it can consider the possibility of inflation protection and the general public interest.

"Necessary" is defined in Black's Law Dictionary (4th Edition) as

"a word susceptible of various meanings. It may import absolute physical necessity or inevitability, or may import that which is only convenient, useful, appropriate, suitable, productive or conducive to the end thought."

In our view, it is "necessary" in the circumstances of this case that a court determine ownership of the surplus. While the Commission is empowered to, and indeed must, make a determination as to whether subsections (a) through (d) of subsection 80(4) have been met, nowhere in the Act is the Commission given the power to determine issues of ownership. Naturally, if ownership were clear, the Commission would not force an applicant to have the matter resolved by the courts. However, in this case, where ownership is unclear we find it necessary to attach as a condition to our consent that Otis obtain a declaration of ownership of surplus.

Apart from the fact that surplus ownership is unclear on the evidence, that no decided case is squarely on point, and that the Commission is not given jurisdiction to decide the question of ownership, there are equities on both sides which move us to add the condition. In favour of Otis, amongst other things, the following can be said:

- since the inception of the pension plan in 1963, all contributions to the plan were made by Otis;
- in all formal plan documents from and including 1966, there has been clear and express provision that on termination surplus would revert to Otis;
- the members of the plan have been on notice of this provision since 1969 by reason of an employee booklet distributed to them in that year and subsequently;
- at all times, even on the informal documentation that subsisted in 1964, Otis was entitled to alter or discontinue the plan at any time subject to its obligations to first satisfy all liabilities to pensioners and employees under the plan;
- the members of the plan at all times were aware of this power to alter or discontinue;
- during negotiation of the closure agreement, the union was aware that there was surplus in the plan;
- the closure agreement signed by the union and Otis contains a release and a waiver of any and all claims or rights of the employees in the union under the terms of the collective bargaining agreement, and under any applicable statute or regulation in connection with or arising out of the discontinuance of the operations in Hamilton; the closing agreement also expressly provides that Otis is under no further obligation to provide any other benefits as a result of the closing of the plant;

The equities in favour of the employees include:

- Over the years, the cost of pension and other benefits was taken into consideration in establishing wages. On the deferred wages theory of pension benefits, the funds in the pension plan are monies that the employees forewent in wages during the period when the surplus was accumulated;
- the evidence disclosed a major dispute between Otis and the union as to whether there was any intention to forego the employees' claim to the surplus;
- the language in the waiver clause in the closure agreement did not expressly deal with surplus. Nor did any other provision. It seems odd that if Otis was so intent on having the employees waive any rights to surplus that that language would not be expressly contained in the waiver clause or elsewhere in the closure agreement;

- even if the closure agreement did constitute a waiver of rights or raise an equity in favour of Otis, the agreement was not unanimously ratified and there was no evidence that retirees were involved in the ratification of that document and the union had no authority to consent on behalf of retirees;
- none of the original plan documents explicitly provide for the payment of surplus to Otis and there are gaps in the evidence as to how and when the surplus reversion clause came into existence.

Conclusion

The Commission consents to payment out of surplus funds to Otis pursuant to subsections 79(1) and 80(4) of the Act and Section 7a(2)(c) of the Regulations on condition that Otis obtain a court order declaring that it is entitled to the surplus.

Dated at Toronto this 8th day of February 1990.

On behalf of:

L. Gordon
D. Collins

E. Gillese
J. St. Georges

D. Stouffer
M. Townson

J.P. Kruger
Presiding Member

IN THE MATTER OF an application by Otis Canada Inc., to the Pension Commission of Ontario.

AND IN THE MATTER OF an appeal from a proposal by the Superintendent of Pensions to refuse to approve a wind up report under subsection 71(5) of the Pension Benefits Act, 1987, S.O. 1987, c. 35, respecting the Otis Canada, Inc. **Pension Plan for Draftsmen Local 164;**

Between:

OTIS CANADA INC.

Applicant

- and -

SUPERINTENDENT OF PENSIONS FOR ONTARIO

Respondent

Date of Hearing:

December 8, 1988
January 5, 1989

Counsel for the Respondent:

Ms. S. Rowland

Counsel for the Applicant:

Mr. J. Campion
Mr. D. Vincent

Ms. E. Gillese, Member
Mr. J. St. Georges, Member
Mr. D. Stouffer, Member
Mr. G. Pattinson, Member

Date of Pre-Hearing:

November 17, 1988

Judgment rendered:

February 9th, 1989

Commission Counsel:

Mr. P. Cavalluzzo

Before:

Mr. J. Kruger, Chairman

The applicant, Otis Canada, Inc. ("Otis"), received a Notice of Proposal issued by the Superintendent of Pensions (the "Superintendent") to refuse approval of a wind up report for the Otis Elevator Company Limited Pension Plan for Draftsmen Local 164 pursuant to subs. 90(4) of the Pension Benefits Act, 1987, S.O. 1987, c.35 (the "Act"). Approval of the wind up report is a necessary pre-condition to obtaining the approval of the Pension Commission of Ontario (the "Commission") to a surplus withdrawal pursuant to subs. 79(1) of the Act. Pursuant to subs. 90(6), Otis required a hearing by the Commission with respect to the Notice of Proposal.

FACTS

On December 31, 1981, two pension plans existed at Otis: the Otis Elevator Company Limited Contributory Pension Plan (the "Contributory Plan") and the Non-Contributory Plan for employees of Otis Elevator Company Limited (the "Non-Contributory Plan"). Salaried employees, including all draftsmen, were members of both the Contributory and Non-Contributory Plans.

Effective January 1, 1982, two major events occurred. First, the Contributory and Non-Contributory plans were merged to become the Otis Canada, Inc. Pension Plan for Non-Bargaining employees (the "Non-Bargaining Plan"). Second, the draftsmen at the Otis Hamilton plant become unionized and the Draftsmen's Association of Ontario Local 164 I.F.P.T.E. ("Draftsmen Local 164") was certified to bargain for the draftsmen. As a result, Otis implemented the Otis Elevator Company Limited Pension Plan for Draftsmen Local 164 (the "Draftsmen Plan") for those of its employees who were members of the Draftsmen Local 164. Otis indicates assets sufficient to fund pensions for service accrued prior to January 1, 1982 for members of the Draftsmen Plan were transferred from the Contributory Plan and the Non-Contributory Plan to the Draftsmen Plan.

As at January 1, 1986, there were six active members of the Draftsmen Plan. Due to a reorganization of Otis, the members of the Draftsmen Plan were no longer required at the Hamilton location after January 1, 1986. The six active members took up employment with Otis at its Oakville office. Since the Draftsmen Local 164 was certified only in respect of the Otis Hamilton location, it did not hold bargaining rights at the Oakville office. As such, it no longer represented the six transferred employees.

A wind up report on the Otis Canada, Inc. Pension Plan for Draftsmen Local 164 was prepared effective October 31, 1987. As at that date, assets relating to the transfer to the Non-Bargaining Plan in respect of 6 active members, some \$184,163 and assets associated with the purchase of annuities, some \$363,874, were still being held in the Draftsmen fund. After accounting for these items, the Actuary found a surplus remaining of approximately \$1,191,939. The Report also stated that the date of discontinuance of the Draftsmen Plan was January 16, 1987.

On December 29, 1987, notice was given to all former members of the Draftsmen Plan of the wind up report and Otis' intention to request, from the Commission, consent to the payment of the surplus remaining in the Draftsmen Plan to Otis.

The wind up report was submitted to the Superintendent on or about January 5, 1988. On November 5, 1988, the Superintendent issued a Notice of Proposal to refuse approval of the Draftsmen Plan wind up report. It is a result of that Notice of Proposal that Otis required a hearing by the Commission.

ISSUES

The Superintendent's refusal to approve the wind up report is based on the belief that the Non-Bargaining Plan is a successor to the Draftsmen Plan within the meaning of subs. 82(1) of the Act. Thus the issue between the two parties relates to the interpretation of that subsection, which reads as follows:

Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan.

Otis maintains that subs. 82(1) was designed to cover the situation in which an employer establishes a new pension plan to be a successor to an existing plan. Obviously, as Otis points out, the Non-Bargaining Plan could not have been a new plan, nor could it have been established to be a successor, as it was in existence years before the draftsmen were transferred to it. So, according to Otis, subs. 82(1) cannot be a bar to the approval of the wind up report.

The Superintendent maintains that since the Non-Bargaining Plan takes the place of the Draftsmen Plan for the draftsmen, the Non-Bargaining Plan is a successor to the Draftsmen Plan. As a consequence, the Draftsmen Plan is deemed not to be wound up and no surplus can be withdrawn by Otis (ss. 80(10) and 82(1)).

The issue resolves itself into which of the two interpretations of subs. 82(1) is correct. Otis' argument is focused upon the following words of the subsection:

"Where a pension plan is established by an employer ..." (emphasis added)

The Superintendent's argument is focused upon the following words:

"Where a pension plan is established by an employer to be a successor to an existing pension plan ..." (emphasis added)

We are satisfied that, following the golden rule of statutory interpretation that words ought to be given their ordinary and grammatical meaning, the latter interpretation is the preferred one for the following reasons. First, under the latter interpretation, the words in the subsection are interpreted in the context of the whole subsection. The former interpretation fails to do this.

Second, the word used in subs. 82(1) is "established", and not "created". Had the legislature intended to capture only pension plans that were newly created, it could easily have said so. We are of the view that the intention underlying subs. 82(1) was to catch plans that are "established to be" successors to existing plans. This is reinforced by reference to the French versions of subs. 82(1) which uses the words "... pour succéder". The Non-Bargaining Plan, in fact, was established as the successor of the Draftsmen Plan when all the active members of the Draftsmen Plan were transferred to it.

Third, the Canadian Law Dictionary defines "successor" as "... one who takes the place of another by succession". Here, the Non-Bargaining Plan "took the place of" the Draftsmen Plan "by succession".

Looking beyond the words of the subsection itself, we are fortified in our view of subs. 82(1) because of the mischief it apparently was designed to prevent. One of the purposes of subs. 82(1) was to prevent the stripping of surpluses from pension plans. If Otis' view of the legislation were to prevail, an employer would be able to transfer its employees from one pension plan to another and then withdraw the surplus from the predecessor plan. Although we make no finding in this case that Otis was attempting to surplus strip, section 10 of the Interpretation Act directs the Commission to interpret the legislation so as to best ensure that its objects are attained.

In conclusion, the Non-Bargaining Plan is a successor to the Draftsmen Plan within the meaning of subs. 82(1) of the Act. The Superintendent is therefore directed to carry out the proposal to refuse the wind up report for the Draftsmen Plan.

Dated at Toronto this 9th day of February 1989.

On behalf of:

Mr. J. Kruger, Chairman
Mr. J. St. Georges, Member
Mr. G. Pattinson, Member

Ms. E. Gillese, Member
Mr. D. Stouffer, Member

Freedom of Information Appeal

*Summary of the Decision of Commissioner Sidney B. Linden,
Information and Privacy Commissioner
December 4, 1989
(Appeal Number #880334, Order 125)*

Background

An application was made under Freedom of Information and Protection of Privacy Act (FOIPOP Act) to the Ministry of Financial Institutions FOIPOP Office on June 22, 1988. The request was to obtain copies of all Statements of Investment Policies and Goals filed since January 1, 1988 with the PCO. The requestor later agreed to the exclusion of names of pension plans and plan sponsors and any other identification from the scope of the request. The Ministry denied access on November 9, 1988 based on the provisions of section 17 of FOIPOP. The applicant (requestor) appealed to the Information and Privacy Commissioner.

Summary of the Decision

The Commissioner decided that the applicant was entitled to the records with all identifying information severed. He stated that for a record to be exempt from disclosure under section 17 of FOIPOP, a three-part test must be met:

- (1) the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information;
- (2) the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
- (3) the prospect of disclosure of the record must give rise to a reasonable expectation that one of the specified harms outlined in section 17 will occur.

The burden of proof to meet this test lies with the head of the institution (the Minister or his delegate) in question, and failure to satisfy the requirements of any part of this test will result in a claim for exemption being denied.

In this situation, the Commissioner held that:

- the information in question was financial;
- there was insufficient evidence to establish that the information supplied was explicitly confidential; neither the Pension Benefits Act, 1987 nor Ontario Regulation 708/87 provide any explicit promise of confidentiality to those filing Statements of Investment Policies and Goals to the PCO; therefore, if there was confidentiality, it would have to be implied from the circumstances, and this was not established; and
- the evidence presented was not sufficiently detailed and convincing to lead to a reasonable expectation that the harm described would occur if the information was disclosed.

Prescribed Forms

The Pension Commission will not be translating prescribed forms until the new legislation is in place. However, we have translated **Form 4 - Spousal Waiver: Pre-retirement Death Benefit** to assist plan members and administrators. It is reprinted on the following page.

LOI DE 1987 SUR LES RÉGIMES DE RETRAIT
RENONCIATION DU CONJOINT À LA
PRESTATION DE DÉCÈS AVANT LA RETRAITE
(ARTICLE 49 DE LA LOI)

Je, _____ ci-après nommé(e) «participant» ou «ancien participant»,
(participant ou ancien participant)
participant», et, _____ ci-après nommé(e) «conjoint», certifions par la
(conjoint)
présente que nous sommes conjoints au sens de la Loi de 1987 sur les régimes de retraite.

À défaut de renonciation, et en cas de décès du participant ou de l'ancien participant

- a) avant le paiement de la pension différée ou
- b) avant le début du paiement de la pension s'il continue à travailler après la date normale de retraite,

la personne qui est son conjoint à la date du décès a droit à cette date à la prestation de décès avant la retraite, qui est payable au titre du régime, _____ en une somme globale
(nom du régime de retraite)
ou sous forme de rente viagère immédiate ou différée.

S'il y a renonciation au droit du conjoint à la prestation de décès avant la retraite, celle-ci sera payée.

- a) soit au bénéficiaire désigné par la participant ou l'ancien participant,
- b) soit à son représentant successoral qui la traitera comme partie de la succession.

Nous renonçons par la présente au droit de _____ à la prestation prévue
(nom du conjoint)
à l'article 49 de la Loi de 1987 sur les régimes de retraite.

Fait à _____, dans la province de _____
(ville)

le _____
(date)

(signature du participant
ou de l'ancien participant)

(témoin du participant ou de
l'ancien participant)

(signature du conjoint)

(témoin du conjoint)

Nous recommandons aux parties de se renseigner sur leurs droits respectifs et sur la portée de la présente renonciation au près d'un avocat.

Contacts for PCO Enquiries

Actuarial	Teck Go	972-5799
Annual Information Returns	Rose Ann Drakes	972-5782
Communications	Judith Chalmers	972-5800
Financial Statements	Larry Falconer	972-5809
Freedom of Information Requests	Ken Doiron	972-5798
General Enquiry - PCO		963-0522
General Enquiry - Secretariat	Lynn Barron	972-5825
Policy Issues	Jerry Williams	972-5826
Mailing List	Lynn Barron	972-5825
PCO Bulletin/Compliance Assistance Guidelines	Judith Chalmers	972-5800
Pension Benefits Guarantee Fund (Administration)	Margaret Fennell	972-5785
Plan Registration-Forms		972-5784
Plan Specific Questions (state plan name and/or provincial registration no.)		963-0522
Statements of Investment Policies	Jules Huot	972-5821
& Goals/Investment Policy Returns		

Note: Acronyms will be used throughout PCO Bulletin and Compliance Assistance Guidelines to make the publications more readable.

AIR - Annual Information Return
 CAPSA - Canadian Association of Pension Supervisory Authorities
 CIA - Canadian Institute of Actuaries
 CICA - Canadian Institute of Chartered Accountants
 FOIPOP - Freedom of Information and Protection of Privacy
 IPR - Investment Policy Return
 MFI - Ministry of Financial Institutions
 OSC - Ontario Securities Commission
 PBA, 1987 - Pension Benefits Act, 1987
 PCO - Pension Commission of Ontario
 SIP & G - Statement of Investment Policies and Goals

APPENDIX

Medium Termination Rate in the Second Report of the Ontario Committee on Portable Pensions		7	50	2	10
		8	44	3	.009
		9	39	4	8
Age	Termination Rates				
25	.200	40	.034	55	.007
6	.180	1	30	6	6
7	.160	2	26	7	5
8	.142	3	23	8	4
9	.126	4	20	9	3
30	.112	45	.018	60	.002
1	.100	6	16	1	1
2	.090	7	15	2	—
3	.80	8	14	3	—
4	.71	9	13	4	—
35	.063	50	.012	65	
6	.56	1	11		

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THE PENSION COMMISSION OF ONTARIO BULLETIN

May, 1990

Volume 1, Issue 2

M.J. Regan Appointed Chairman of The Pension Commission of Ontario



M. J. (JOE) REGAN

M.J. (JOE) REGAN was recently appointed a member and Chairman of the Pension Commission of Ontario. The appointment, announced by Premier David Peterson, is for a three year term.

Mr. Regan joins the Pension Commission of Ontario following a distinguished career with the Royal Bank of Canada. He joined the Royal

Bank in 1950 and over a 40-year period held a number of senior positions in Canada and internationally.

His international assignments included senior postings in New York and San Francisco. In 1974, Mr. Regan was named the General Manager of the Royal's operations in the United Kingdom, Ireland and Scandinavia, based in London.

Mr. Regan returned to Canada in 1977 as Deputy General Manager of the Bank's International Division. Subsequently, in 1982, he was appointed executive vice-president, Domestic Banking, and Senior Executive Vice-president, Retail Banking the following year.

Most recently, as Senior Executive Vice-president, Strategic Initiatives, Mr. Regan focused on developing the Royal's strategic response to changes taking place in the financial services industry. This included matters related to the trust and insurance industries in Canada as well as opportunities in the U.S. market.

Mr. Regan brings a wealth of knowledge and experience as well as vision and vigour to his new responsibility as member and Chairman of the Pension Commission of Ontario.

He succeeds former Chairman, Mr. William Somerville who was recently appointed Chairman of the Public Service Pension Board.

In his official capacity as Chairman of the



HIGHLIGHTS

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Commonly Asked Questions

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Financial Statements for Pension Plans

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page eighteen

Pension Commission of Ontario, Mr. Regan gave a luncheon address at the Mercer Tax Reform Seminar on May 16, 1990. We will publish his remarks on this occasion - Mr. Regan's first speaking engagement - in the next issue of the PCO Bulletin.

More on PCO Organization and Branch Functions

IN THE FIRST ISSUE of the PCO Bulletin we reviewed the mandate, background and structure of the PCO; now this second article looks further into the organization and Branch activities.

In the early 1980s, the pension policy review process was initiated at the federal and provincial levels and in 1986 the Premier appointed John Kruger as Chairman of the Commission to steer the reform process. As a result of passage of Bill 170, a Task Force was struck to reorganize the PCO to better cope with the demands of the new legislation. This was to be accomplished through the establishment of the Secretariat - a Branch designed to deal with existing and emerging policy issues, and the introduction of computer technology to improve pension regulation. The Task Force report was reviewed by staff and referred to a Commission Subcommittee for its recommendations.

In January, 1987 the Commission approved the recommended structure of the PCO establishing the three Branches: the Secretariat, the Pension Plans Branch, and Operations. While restructuring got underway, Robert H. Hawkes, Q.C. was appointed Superintendent of Pensions in April, 1987 followed by the appointment of Directors to the three Branches. The subsequent restructuring of the PCO and refinement within the Branches has enhanced the PCO's ability to achieve its regulatory mandate.

The Superintendent of Pensions

Along with having powers under the PBA, 1987 relative to registration, administration and wind up of pension plans in Ontario, the Superintendent of Pensions as the Chief Administrative Officer, is responsible for the activities of the three operating branches of the PCO.

The PBA, 1987 gives the Superintendent powers to make a wide variety of orders. For example, he may issue an order requiring an Administrator to take or to refrain from taking any action; he may require certain information be provided to determine in fact whether the legislation has been breached; he may require the wind

up of a pension plan in various circumstances; or, he may appoint an Administrator in order to protect the pension plan assets in the event of a wind up.

The Directors of all Branches of the PCO report to the Superintendent and their Branch goals, objectives and resource allocations are approved by the Superintendent, who in turn accounts for overall performance and reviews strategic planning for the PCO with the Deputy Minister of the Ministry of Financial Institutions.

Also advising the Superintendent and indirectly the Commission, is the Senior Legal Counsel who acts in a professional-client relationship with the Superintendent by providing legal opinions on legal and enforcement issues, matters related to the PBA, 1987 that may arise, and other relevant legislation. The Senior Legal Counsel and legal staff generally are involved in the drafting of regulations and amendments. It should be noted that the Senior Legal Counsel and legal staff do not offer opinions or advice to pension consultants or lawyers. The Senior Legal Counsel is a member of the staff of the Ministry of the Attorney General whose on-site client in this case is the Superintendent of Pensions.

The Secretariat

The Secretariat Branch provides a broad range of specialized services to the Commission and to staff of the PCO in relation to legislative requirements arising from the PBA, 1987. The **Registrar/Secretary to the Commission** provides support services to the Commission in both its administrative and adjudicative roles. Under the guidance of the **Director**, staff of the Secretariat play a key role in amendments to the Regulation and legislation by identifying and formulating regulatory issues and carrying out preliminary drafting. The Secretariat co-ordinates the PCO public consultation process, formulates policies and establishes administrative practices to assist plan sponsors, Administrators and consultants to facilitate compliance with the legislation.

The **Actuary** and staff recommend funding, solvency and benefits standards to the Commission, consult on Regulation changes, and are responsible for reviewing actuarial reports which fall outside the established guidelines for Pension Officer approval. The **Manager, Investment Policy Analysis** consults on and develops investment policies to regulate pension plan assets. The **Plan and Investment Auditor** is responsible for monitoring accounting practices and establishing financial and business standards in pension plan administration. On-site pension plan audits are conducted routinely.

The **Manager, Research & Communications** coordinates the research/policy development and external and internal communications

functions. The **Research Analyst** assists in the policy development process and liaises with the Commission and staff of the PCO concerning proposed policies and their impact on a variety of pension issues. Written policy enquiries are reviewed and processed by the Research Analyst in consultation with the Policy Committee. The **Communications Officer** executes the communications strategy internally and externally. Policies and administrative practices, general information, and regulatory standards are communicated to pension industry participants and other interested parties through the PCO Bulletin and Compliance Assistance Guidelines.

Pension Plans Branch

The Pension Plans Branch is the largest of the Branches and ensures compliance with regulatory standards. The Branch is divided into three distinct areas based on type of pension plan – defined benefit, defined contribution, and special plans. **Pension Officers** carry case loads based on their type-of-plan specialization. They assist Administrators in the day-to-day administration of pension plans and funds and respond to plan-related enquiries.

After all plan documents and correspondence have been logged and vetted by the Operations area they are sent to the Pension Officer assigned to the plan. Actuarial reports and plan documents are analyzed, approved, and forwarded if necessary to the actuarial, audit or investment staff for further review, or are referred to the Administrator or the appropriate agent for additional information. Among various activities, the Pension Plans Branch processes plan wind ups and requests for refunds of surplus for the review and approval of the **Superintendent of Pensions** or the Commission as applicable and in accordance with the legislation.

Operations Branch

The Operations Branch is responsible for three main activities. The operations group directed by the **Manager, Operations** performs the PCO's front-end processing function. This involves the receipt, deposit, categorization, vetting and data capture of all pension plan document information required by the legislation.

The **Project Manager** of the newly-created Information Systems Services Group (ISSG) is in the process of implementing the new information technology system, which will fully automate the PCO over a three-year phase-in period. This will result in on-line retrieval systems, office information systems and streamlining of filing processes. The primary beneficiary of this technological effect will be the plan sponsor who will experience fewer backlog delays and "instant" answers to complex questions.

The **Manager, Finance & Administration** provides all the PCO's administrative needs.

The organization chart on page 19 provides an overview of the structure and staff of the PCO.

The Roles of the Appointed Commission and the Registrar/Secretary to the Commission

THE PENSION COMMISSION

of Ontario as a regulatory agency operates on two distinct levels. Staff administer the legislation on a day-to-day basis and the nine-member appointed Commission assumes both an administrative and an adjudicative role.

The Commission itself has a dual function. It meets regularly as a Commission to conduct business and discuss with staff timely matters before it, and as a tribunal to hear cases in its quasi-judicial function. Operationally, the Commission is supported by the Secretariat and serviced in particular by a staff person who also performs the functions of Registrar/Secretary to the Commission.

Commission appointments are made by Order in Council. The Commission is comprised of experienced professionals and knowledgeable individuals in fields related to pensions who are interested in guiding and contributing to the evolving pension system in Ontario. The actuarial, legal, accounting and banking professions are represented on the current Commission. Also included on the Commission are representatives from labour, benefit consultants and a journalist/consumer advocate. The Commission must operate objectively and at arm's length from its various constituencies including the Government and PCO staff.

The Registrar/Secretary to the Commission is responsible for ensuring that procedures are strictly observed. The **Secretary to the Commission** liaises and provides support services for the monthly Commission meeting and co-ordinates sub-committee meetings. In addition to preparing the meeting agenda, the Secretary co-ordinates agenda materials and records minutes and decisions of the Commission.

When in its quasi-judicial role, the **Registrar** is responsible for co-ordinating arrangements with all affected parties to the proceeding to ensure due process. This includes co-ordinating all documentation and evidence.

Applications to the Commission

The number of hearings before the Commission has been increasing and the issues requiring

Commission consideration are more complex largely arising from the number of plan wind ups, the moratorium on surplus withdrawal, and a series of decisions of the courts having a bearing on surplus-related issues.

The following very general guidelines should be noted by parties making applications to the Commission:

1. the original application with supporting documentation plus one copy is addressed to and filed with the **Registrar**; and
2. the application contains:
 - a) a formal request specifying the section of the PBA, 1987 or Regulation under which the application is being made; and
 - b) an explanation and justification for making the application with reference to precedents, if known.

Detailed guidelines dealing with the material to be filed and procedures to be followed in making applications are currently being prepared and will be published as soon as possible in the series of Compliance Assistance Guidelines.

Upon receipt, the application will be processed internally and will be considered subsequently by the Commission. Any comments of plan members or affected parties in response to notice being given should be addressed to the Registrar. The Registrar will then advise the applicant of the decision of the Commission.

Commission decisions arising from applications considered by the Commission will be published commencing with this issue of the PCO Bulletin under the section "Decisions".

Notices

Annual Information Return Deadline Reminder

ADMINISTRATORS OF PENSION

plans with a December 31, 1989 year end are reminded that the deadline for filing the Annual Information Return (AIR) and fees is June 30, 1990. Administrators of defined benefit plans are also required to file a Pension Benefits Guarantee Fund Assessment Notice and fees by the same deadline. If you have a different pension plan year end, the AIR, fees and Notice are required to be filed no later than six months after the plan's year end.

As reported in the first issue of the PCO Bulletin, a late filing penalty will be imposed on AIRs, fees and Notices postmarked after the filing deadline. The penalty is calculated at 20% of the filing fee payable plus daily interest.

A Compliance Assistance Guideline on preparing and filing Annual Information Returns has been published to assist Administrators; it is being circulated with this issue of the PCO Bulletin.

Future Pension Conference and Seminar Dates to be Published

We invite organizers and sponsors of conferences and seminars related to pension issues to advise The Editor, PCO Bulletin of all upcoming events for publication in future issues of the PCO Bulletin commencing with the August issue.

We are pleased to list the event, the organizer, the date and location of the event. This is not intended to replace the organizer's own advertising efforts in respect of the program; rather, it is provided as a convenience to PCO Bulletin readership and for information purposes only.

The PCO Bulletin is published quarterly. The deadline for submissions for the August issue is July 20, 1990; the deadline for submissions for the November issue is October 19, 1990.

Pension Advisory Committees Established

The Secretariat of the PCO recently established two pension advisory committees to consult with staff of the PCO on a variety of emerging policy issues. The Legal and Actuarial Advisory Committees are not intended to supplant industry-wide consultation for the development of pension policy; instead, they will be called upon to consider matters at the request of staff on a timely basis, and will provide technical advice and comment on the practical impact of proposed policies.

It is the intention of staff to continue our stated objective: to seek industry consultation and consensus on a wide variety of pension policy issues in the interest of developing the best possible solutions to pension problems.

The Pension Advisory Committees will review policy issues from a legal and actuarial perspective. The Actuarial Advisory Committee is chaired by Paul Saunders of G B B Buck Consultants, and has been established through the Canadian Institute of Actuaries Liaison Committee With Government Authorities on Pension Matters. The Legal Advisory Committee is currently being established through the Pension and Benefits section of the Canadian Bar Association (Ontario Branch) which is chaired by Sean Weir of Borden & Elliot. Actuaries/consultants interested in serving on the Actuarial Advisory Committee should contact Paul Saunders; lawyers interested in serving on the Legal Advisory Committee should contact Sean Weir.

New Policy Concerning Plan Member Enquiries

The PCO receives numerous plan member enquiries on a daily basis. Although staff endeavour to

assist whenever possible, the workload created by these enquiries - which often requires checking into the terms of the plan - seriously undermines our efficiency.

We will continue to assist plan members only when it appears to be absolutely necessary. **In response to such enquiries, staff will refer the plan member to the Administrator** with the expectation that the Administrator will assist as required in subsection 10(1) 12. of the PBA, 1987; the Administrator is required to provide information including any explanations concerning rights, entitlements under the terms of the pension plan, and obligations of the parties to the deal. The legislation also requires the Administrator to disclose statements and documents to plan members. Plan member complaints concerning failure of Administrators to service reasonable requests will be reviewed by staff.

Furthermore, under the PBA, 1987, plan members have a right to information contained in any document filed with the PCO. Although plan members can contact the PCO for copies of the documents for a fee, the responsibility for making the information available lies in the first instance with the Administrator.

We are required to adopt this approach because of the practical limitations on available staff resources and the pressure to process the increasing number of filings received by the PCO.

Administrative Practices

THE FOLLOWING administrative practices are to be observed by Administrators and their agents in the circumstances.

Policies and administrative practices are interim pending the amendment of the PBA, 1987 and Regulation. The following administrative practices do not necessarily constitute comprehensive treatment of practice and procedures. In the meantime, the PCO is interested in receiving industry comments and invites consultation in respect of the following administrative procedures. Please forward your comments to the Research Analyst at the PCO.

Filing Annual Information Returns

Staff of the PCO are reviewing and will be revising the Annual Information Return in the near future to improve and simplify the form, and to ensure accountability by the Administrator of the pension plan with a declaration to be signed only by the Administrator.

Presently, the declaration for the AIR re-

quires the individual who has prepared the document - and who is designated by the Administrator identified on the AIR - to sign the AIR. It is expected that this individual is a responsible officer, senior employee or agent of the Administrator.

Because the PBA, 1987 imposes on the Administrator full accountability for any delegation of responsibility, it is the Administrator who is legally liable for the AIR. Furthermore, the PBA, 1987 imposes on the Administrator the responsibility for filing documents. Therefore it is in the interest of the Administrator to ensure the AIR is accurate, complete, signed and filed on time.

Recently, it has come to our attention that some AIRs are not being signed.

The following administrative practice has been adopted to facilitate receipt of signed AIRs: if an unsigned AIR is received by the PCO, **it will not be accepted for filing;** however, we will retain a photocopy of the AIR for our records and will retain the filing fees. The original unsigned copy of the AIR will be returned to the Administrator for proper execution and it must be returned to the PCO within ten days, otherwise a late filing fee, if applicable, will be imposed in accordance with the Regulation.

This administrative practice has been adopted to facilitate plan compliance with the legislation and to reiterate the duties and accountability imposed by the PBA, 1987 on the Administrator.

A Compliance Assistance Guideline has been published to assist Administrators with the preparation and filing of the AIR.

Refunds of Employer Overpayment to Pension Fund

There are certain situations in which an employer may be considered to over-contribute to a pension fund for the purposes of subsection 79(4) of the PBA, 1987 including where:

- 1) the employer contributes on the basis of an actuarial report for which the effective date has passed but a new report is not yet filed; for example
the employer pays post-retirement increases to retirees from general revenues in anticipation of an enabling amendment to the plan; or
- 2) otherwise, where payments have been made directly by an employer which should have been made from the pension fund; for example
the employer may be considered to have over-contributed notwithstanding that there may be a solvency or ongoing funding deficiency in the pension plan.

The Commission has determined that a requirement of notice to members is neces-

sary for any application made under subsection 79(4) of the PBA, 1987 with respect to refunds of employer overpayments.

The following administrative practice summarizes the steps for giving notice.

1. Before giving notice, the applicant shall submit a copy of the notice to the Superintendent with a statement identifying all persons to whom it is proposed that notice be given and a description of the manner proposed for distribution of the notice.
2. The Superintendent shall advise the applicant in writing of the adequacy of the contents of the notice, and will confirm the appropriateness of those persons to whom it is proposed notice be given and the method of distribution.
3. Contents of notice to plan members to include:

- name of the pension plan and provincial registration number;
- review date of the actuarial report provided with the application, if applicable;
- the funding deficiency on both an ongoing and solvency basis, if applicable;
- the authority for refund of employer overpayment (in plan text, trust agreement and legislation);
- a statement to advise plan members that submissions concerning the application may be made in writing to the Registrar of the PCO within thirty days after receipt of notice; and
- a statement to advise plan members that copies of the actuarial report, if applicable and any other pertinent material filed with the Commission in support of the application may be reviewed at the offices of the employer and at the Pension Commission of Ontario (an appointment should be made); and with information as to how copies of the documents may be obtained.

4. Notice shall be given to:

- each member of the pension plan to which the pension fund relates;
- each trade union that represents members of the pension plan;
- each person who is entitled to a deferred pension under the pension plan;
- the advisory committee established in respect of the pension fund; and
- any other individual who is receiving payments from the pension fund

except where to give such notice is considered impractical or unnecessary in the specific circumstances of the case.

5. Notice shall be sent:

- by prepaid first class mail addressed to the most recent address of the person on the records of the employer or Administrator

except where to give notice in such a manner is considered impractical or unnecessary in the specific circumstances of the case.

6. The application for refund of employer overpayment to the pension fund under subsection 79(4) will include in addition to supporting documentation:

- a certified copy of the notice that was given;
- details of the classes of persons to whom notice was given;
- the method of distribution of the notice; and
- the date on which notice was given.

NOTE: The factual situations under which applications pursuant to subsection 79(4) may be made do not include those arising from the new requirement of the Income Tax Act that any forfeited amounts in a defined contribution pension plan must be refunded to the employer or reallocated to the members. A forfeited amount is one to which a plan member has ceased to have any rights, such as an employer's contributions to a member's pension benefits when the member terminates employment but is not vested.

General Procedures for Plan Mergers - Requirements for Superintendent's Consent

The PBA, 1987 does not specifically address mergers of pension plans in circumstances where two or more plans of one employer or of related employers are combined and administered as one plan. Staff have adopted the position that where a pension plan merger occurs, it results in the establishment of a new successor plan to each of the merging plans. Successor plans are dealt with under section 82 of the PBA, 1987.

Accordingly, the transfer of assets from each of the merging plans to the successor plan requires the approval of the Superintendent under subsection 82(4). Moreover, the Superintendent must refuse to consent to a transfer of assets from any of the merging plans "that does not protect the pension benefits and any other benefits of the members and former members" of a plan whose assets are being transferred.

The requirements for the consent of the Superintendent where there are underfunding or plan surplus issues are dealt with in this notice.

When plan mergers are proposed, the Superintendent will require as a condition of consent, that funding levels for all members are protected in the successor plan and that employees' entitlements to surplus in any merging plan are not adversely affected.

General Conditions for Pension Plan Mergers

The following apply generally to all plan merger circumstances:

- a) the merger cannot be contrary to the terms of any of the merging plans;
- b) the amendment to the merging plans which creates the successor plan must be effected in accordance with amending provisions in the respective merging plans; and
- c) no accrued pension benefits of any member shall be reduced as a result of the merger.

Conditions in Under-funded Situations

If a plan merger has occurred, the funded ratio in the successor plan on a **solvency basis** must not be less than that of the highest of the plans being merged - but need not exceed 1.00. This will ensure that a member's pension benefits are not at increased risk because of underfunding in the merged plan. In the event the successor plan is fully funded, the member is considered to be adequately protected.

Although it is preferred that the successor plan will be funded, if necessary, by a cash infusion, other funding situations for the successor plan consistent with existing funding situations for the merging plans will be considered on their merits.

Conditions in Surplus Situations

- a) If surplus ownership and entitlement are clearly attributable to the employer in the plans to be merged, the Superintendent will grant consent to the transfer of assets without regard to the existence of surplus in one or more of the plans.
- b) Where surplus ownership and entitlement are clearly attributable to the employees in a merging plan, the surplus may not be used for the benefit of members of another pension plan through the successor plan, unless the plan so provides.
- c) Where there are inconsistencies in the provisions of the plans to be merged and the successor plan regarding any provision which adversely or potentially adversely affects the rights of members including:
 - entitlement to surplus;
 - the right of the employer to take contribution holidays; or
 - the amendment of the plan

regard must be had for recent Court decisions concerning the status of the pension plan as a trust, and as to the rights of employees to surplus in merged plans. In some circumstances, it may be necessary to

make application to the Court for a variation in trust with respect to one or more of the merging plans.

General Procedures for Effecting Plan Mergers

- a) It is advisable that any potential problems with the proposed merger, relevant to the jurisdictions of the Superintendent or the Commission, be discussed with staff as early in the process as possible. Matters for discussion may arise as a result of the administrative practice or otherwise. It is helpful to staff to obtain a written summary of the situation including, for instance, background notes, objective and identification of problems prior to meetings or discussions.
- b) A merger is effected by amendments of the merging plans. Plan amendments should be filed with a fully restated plan text for the continuing plan and an accompanying explanatory letter. Supporting actuarial reports will also be required in the case of a merger involving a defined benefit plan. Actuarial assumptions of the merging plans and the successor plan used to determine the solvency ratio or the existence of surplus must be consistent with each other.
- c) Notice of a plan merger must be given to members of the plans that are to be merged, unless notice is waived by the Superintendent. It will be necessary to give notice to plan members and retirees as provided under subsection 27(1) of the PBA, 1987 where an amendment is adverse or potentially adverse.

Discretion of the Superintendent

Notwithstanding the foregoing requirements for consent, the Superintendent may consent to a transfer of assets relating to a plan merger of pension plans where he is satisfied that the pension benefits and other benefits of the plan members and former members of the merging plans are protected in the circumstances.

Gradual and Uniform Accrual of Pension Benefits

One of the objectives of the PBA, 1987 is to ensure that pension benefits accrue evenly during an employee's period of membership in a plan so that dramatic increases at certain times are avoided. In the absence of a clear description of what constitutes gradual and uniform accrual, plan sponsors and consultants have been submitting specific formulas to staff for review and acceptance.

A plan that would provide a great bulk of pension benefits if the employee were to stay with the company until retirement is not permitted as it



is inequitable to younger members.

In a defined benefit plan, a formula that provides a large jump in benefits at certain times may place the employee in a vulnerable position. For example, an older employee could be terminated just prior to the time when the increase would begin, or might be unable to retire until he has reached the age of the increase; on the other hand, a younger or part-time employee's entry level might be so low that it would be very disadvantageous in the circumstances. Further, provisions which allow ancillary benefits such as early retirement windows and bridging benefits appear to be - by their nature - contrary to the principle of gradual and uniform.

Staff will require that the following conditions in a formula must be met for the benefit to accrue on a gradual and uniform basis:

a) Defined Benefit Plans

The gradual and uniform accrual requirements of subsection 11(1) apply only to the accrual of basic pension benefits, not to the ancillary benefits as set out in subsection 41(1). When early retirement windows are being provided, the basic pension benefit is subject to gradual and uniform accrual, but not the ancillary benefit.

b) Defined Contribution Plans

1. Once the initial rate of contribution has been established, the contribution formula should provide for benefit increases in reasonably equal increments and intervals of time. The rate of contribution established at the outset should not be lesser than subsequent rate increases, in order to avoid prejudice to younger workers or newer employees.
2. A plan may use a step formula for an early period of membership, and a level formula for all subsequent periods.
3. A specific contribution rate schedule, such as that approved and in use in Quebec, is consistent with the intention of the PBA, 1987 and is acceptable.

The requirements of this policy will apply to new plans, including those into which existing plans are being converted.

Collection of Contribution Monies and Delinquencies - MEPPs

Employer and employee contributions to the pension fund must be paid when due and according to the prescribed manner as set out in section 56 of the PBA, 1987 and applicable sections of the Regulation dealing with funding of pension plans. Administrators of multi-employer plans should also refer to section 56 of the Regulation dealing with notices of default in the case of such plans.

When a contribution to the pension fund is not paid when due, the Administrator or the Administrator and agent are required to provide written notice to the Superintendent pursuant to section 57 of the PBA, 1987. Written notice must be received by the Superintendent within 60 days after the date on which the Administrator or the agent first became aware of the failure to pay the contribution (or 120 days at the latest if a multi-employer plan).

The Administrator's responsibility in this matter does not end with giving the above notice. Section 58 of the PBA, 1987 deems the employer to hold in trust for the employees and plan beneficiaries any monies that accrue to a pension fund that have not been paid to the pension fund. Furthermore, section 58 provides for a lien and charge on the assets of the employer:

(5) The Administrator of the pension plan has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust under subsections (1), (3) and (4).

It is the view of staff that an Administrator, observing the duties of care and prudence imposed by section 23 of the PBA, 1987, must identify promptly and pursue the delinquent employer to collect overdue monies together with any outstanding interest that has been lost as the result of the delay in payment. This applies to single and multi-employer pension plans. In cases where the Administrator is the employer, it is essential that the employer:

- 1) recognize its obligation to the pension plan imposed by the PBA, 1987;
- 2) notify the Superintendent of delinquency within the prescribed time limits; and
- 3) remit outstanding monies to the pension fund without delay.

Administrators and their agents should continually monitor and ensure payments are made to the pension fund properly and on a timely basis.

If Administrators or their agents have any questions concerning this matter, please direct enquiries to Bill Qualtrough, Pension Officer (MEPPS) at 972-5762 or Larry Falconer, Plan and Investment Auditor at 972-5809.

The Administrator: Key Role – Key Person

THE ADMINISTRATOR is at the centre of pension plan management and conduct, and as such is the person who is ulti-

mately responsible to all participants – the plan beneficiaries, the plan sponsor and the regulatory authorities. Both the PBA, 1987 and the common law impose a binding duty on the Administrator to ensure that the pension plan functions according to the requirements of the law and in the best interest of the beneficiaries.

Who is the Administrator?

Which person or persons can be the Administrator? The PBA, 1987 sets this out in subsection 8(1): either the employer or employers, a pension committee, an insurance company if it guarantees all of the pension benefits of the plan, a board of trustees for a multi-employer plan, or a special body authorized by an Act of the Legislature.

Pension committees require special mention. A pension committee may be composed of one or more representatives of the employer or another person required to make contributions under the plan, and members of the plan; or, it may be composed solely of representatives of members of the plan and include a representative of members currently receiving pensions. Generally, it is a joint responsibility of plan members and the employer to determine whether such a committee will be established and to select the committee's membership.

It is important not to confuse the Administrator with other persons involved in the administration of the plan. The employer who establishes and contributes to a plan is not the Administrator - if another person is designated to assume that role. Unless an insurance company which holds pension monies guarantees to provide annuities in all circumstances, its responsibilities are **not** those of the Administrator. Professionals who advise about certain aspects of plan management or administration - investment managers, actuaries, lawyers, accountants, or brokers, whether any or all are part of consulting firms - may be employees, independent contractors, or agents, **but they are not Administrators**. Nor are trust companies which hold the assets of the pension plan.

Finally, it is important to differentiate between the person who has the ultimate responsibility and authority for the pension plan - the Administrator - and those persons who conduct day-to-day "administration" of the plan - bookkeepers, secretaries, processors, or any of the previously mentioned professionals or advisers.

The Administrator's Areas of Responsibility

1. Registering the Plan and Amendments, Making Fees Payments.

According to the PBA, 1987, the Administrator is responsible for making application to register the plan within 60 days of its establishment

[subsection 9(1)], and to apply for registration of any plan amendment within 60 days of the date on which the plan is amended [subsection 12(1)]. Further, the Administrator must ensure that the appropriate fees are paid when the plan is registered [subsection 9(2)].

2. Filing Required Reports and Making Payments of Recurring Fees.

The Administrator must file the Annual Information Return and ensure that the appropriate fees are paid [subsection 21(1)]; any additional reports prescribed by the Regulation also must be filed [subsection 21(2)]. This requirement includes adopting, filing and amending the Statement of Investment Policies and Goals (Regulation: section 63).

In every instance, the Administrator is accountable for filing forms **accurately, completely and on time**. Penalties are provided for late filings and extensions of time are not normally granted for filing of forms and payment of overdue fees. The Administrator also must ensure that the filed reports are **properly and duly signed**. If they are not, the PCO must assume the plan to be in non-compliance with the legislation.

3. Providing Required Information to Plan Members and Interested Parties.

The PBA, 1987 contains a number of requirements for the disclosure of information to plan members, former members, spouses of members or other appropriate persons. It is the duty of the Administrator to guarantee that disclosure requirements are met on a timely basis. The Administrator must be familiar with the disclosure requirements in a variety of circumstances required by the PBA, 1987 and the Regulation.

Examples of information to be disclosed:

- Each person who becomes a plan member or is eligible to become a member is entitled to an explanation of the plan provisions that apply to each person, an explanation of his rights and obligations under the plan, and any other prescribed information (section 26).
- Those persons who would be affected by any plan amendment that would result in a reduction of pension benefits or would adversely affect the rights or obligations of a member or anyone entitled to payment and are specified by the Superintendent must receive notice (section 27).
- Each plan member must receive an annual statement of all pension benefits and ancillary benefits, containing the prescribed information [Regulation: subsection 36(1) and section 28].

- When a plan member terminates employment or ceases to be a member of a plan, the member is entitled to a statement of benefits containing the information provided in sections 37, 38 or 40 of the Regulation (and PBA, 1987 section 29). In addition, there are a number of specific situations in which information must be given to parties, such as notice for election of options for portability of pensions, information to surviving spouses in situations of pre-retirement death, and many others which are found in the PBA, 1987.

The Administrator must be knowledgeable about the numerous disclosure requirements contained in the PBA, 1987 and the Regulation and must make the information available to those who are entitled to receive it. This is not an optional service that may be provided, **but a legislative requirement that must be honoured.**

Often, plan members address plan-related enquiries to the PCO which ought to be directed to the Administrator of the pension plan. It is also a duty and obligation of the Administrator to respond to any member enquiries and inform them of available options responsibly. The policy of staff of the PCO is whenever possible, to refer plan member enquiries to the Administrator.

4. Ensuring Pension Plan and Fund are Administered in Accordance with the PBA, 1987 and the Regulation.

This responsibility goes to the heart of the Administrator's duty. It compels the Administrator to understand statutory requirements that govern Administrator conduct and provide the context for the requirements set out in the terms of the plan text or trust agreement. The PCO staff take the view that the provisions of the PBA, 1987 that describe the duty of care the Administrator owes to beneficiaries of the plan is that of a fiduciary and as such, the fiduciary must act in keeping with one who holds a trust.

The PBA, 1987 sets out the duty of care of the Administrator in section 23:

- (1) The Administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.*
- (2) The Administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the Administrator possesses or, by reason of his or her profession, business or calling, ought to possess.*

The Administrator then, in administering the pension plan must meet the standard of ordinary prudence which demands the care which a reasonable person would exercise in dealing with the property of another person. If any special skills are possessed, or should be possessed, the Administrator is held to an even higher standard.

What Can Be Delegated?

One of the key questions Administrators ask is whether they must themselves carry out all the responsibilities or may delegate some to others. Section 23 of the PBA, 1987 states:

- (5) Where it is reasonable and prudent in the circumstances so to do, the Administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.*
- (7) An Administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the Administrator shall carry out such supervision of the agent as is prudent and reasonable.*
- (8) An employee or agent of the Administrator is also subject to the standards that apply to the Administrator under subsections (1), (2) and (4).*

It is clear that an Administrator may delegate virtually all tasks to others as long as the requirements in subsections 23(7) and (8) are satisfied, and that it is reasonable and prudent in the circumstances to do so. The delegated task, of course, must be one which the Administrator is able to do and is within his authority.

Conflicts of Interest

The Administrator must ensure that personally and otherwise there is no conflict of interest in regard to the pension fund, as indicated in section 23 of the PBA, 1987:

- (4) An Administrator or, if the Administrator is a pension committee or board of trustees, a member of the committee or board that is the Administrator of a pension plan shall not knowingly permit his or her interest to conflict with his or her duties and powers in respect of the pension fund.*

The Administrator must consider the interests of plan beneficiaries and not permit personal interests to conflict with the goals of the pension fund. However, the existence of conflicts is recognized. For instance, the Regulation does allow an agent or

employee of the Administrator to have an investment in the pension fund (which would otherwise be a conflict) if complete disclosure of the fact - or conflict - is made. The investment also must comply with the requirements of the Statement of Investment Policies and Goals as noted under section 65 of the Regulation.

Professionals and Conflict of Interest

Professionals who advise the plan also must ensure they do not contravene the conflict of interest rules. In some instances, professionals may have a contractual relationship with the plan sponsor in respect of the plan sponsor's affairs, but are also agents of the Administrator in respect of the plan.

All professionals should be familiar with the rules regarding conflict of interest in the PBA, 1987, the Regulation and other applicable statutes, as well as the professional standards for conduct and ethics embodied in codes established by professional associations, and conduct themselves accordingly.

Any questions regarding conflicts of professionals or agents in the context of pension issues and the requirements of the PBA, 1987 should be directed to the appropriate individual or committee of the professional association for consultation.

Failure of the Administrator to Fulfill Responsibilities

If it is determined that the Administrator has failed to discharge his responsibilities, the following consequences may ensue:

1. If the Superintendent has reason to believe that a plan or fund is not being administered in accordance with the PBA, 1987 or Regulation, or the plan does not comply with the legislation, or the Administrator has contravened a requirement, the Superintendent can require an Administrator to take or refrain from taking any action in respect of a plan or fund under section 88 of the PBA, 1987.
2. The offence provisions of the PBA, 1987 provide that every person who contravenes the PBA, 1987 and Regulation, or an order under the PBA, 1987, is guilty of an offence under section 110 and is subject to the statutory penalties described in section 111. In determining whether a breach has occurred, the Superintendent has the authority to thoroughly investigate the administration of a plan or fund and may enter into business premises, make examinations, investigations and enquiries, and have access to books and records to ensure proper management under section 107 of the PBA, 1987.

This article has identified the primary obligations and responsibilities of the pension plan Administrator. It is not intended to be comprehensive or exhaustive; the PBA, 1987 and Regulation deal with numerous specific functions or activities which Administrators must fulfill. It is essential that Administrators familiarize themselves thoroughly with all statutory provisions and requirements.

Investment Responsibility: Prudence in Action

THE PENSION BENEFITS Act, 1987 replaced the "legal for life" approach to pension fund investment with the concept of prudence. The relevant subsections are 23(1), (2), (3), (5), (7) and (8) and 63(1) of the PBA, 1987 and subsection 63(2) of the Regulation.

The current pension legislation also deals with conflicts of interest, which was discussed in the last issue of the PCO Bulletin. Conflicts of interest, the concept of prudence and the delegation of investment responsibility are three elements of a standard of care imposed on Administrators and their agents by the PBA, 1987.

How did we get here?

Subsection 23(1) is commonly called the "prudent person" rule; its origin goes back several hundred years in the law of trusts. The classic statement was made in Britain in 1886: "The duty of a trustee is not to take such care only as a prudent man would take if he had only himself to consider, the duty rather is to take such care as an ordinary prudent man would take if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide."¹ This standard has been applied by Canadian courts, albeit to investments made by a trustee from the statutory list of securities or from securities authorized.

It is interesting to compare this standard with the prudent man rule in effect in the United States, because Canadian investment managers have thought predominantly in terms of the North American context. Justice Putnam of Massachusetts laid down this rule about 160 years ago: "All that can be required of a trustee to invest, is, that he shall conduct himself faithfully and exercise a sound discretion. He is to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of the capital to be invested."²

The essential difference is that the model

statute in the United States sets up as the standard of care the judgement that a prudent person exercises in the management of his or her own affairs, whereas under the standard applied by the courts in Canada, emphasis is put on the management of other people's money. The Canadian courts thus impose a higher standard of conduct than the rule in the United States.

However, Canadian investment managers have been relieved that there was no counterpart to another United States law, the Employee Retirement Income Security Act (ERISA). As it was originally applied, every investment had to be prudent *per se*. This interpretation was the traditional one dating from 1830 whereby only "investment" was allowed and "speculation" was not, and led to the drafting of "legal lists" and the labelling of particular investments as speculative for all time and purposes.

As modern portfolio theory was formulated and its principles of portfolio management became widely accepted, there arose a conflict with these constraining notions of prudence. Fortunately, the law of prudence has evolved in conjunction with investment theory and the realities of the marketplace. ERISA and its Regulation now do not prescribe the specific investments pension funds may make. Instead, it imposes on Administrators a general duty to act prudently, "with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use..."³ Another requirement is to "diversify the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so."⁴

We can see that the emphasis has moved to the decision-making process in judging investment prudence. As the United States Department of Labor has stated: "(1) Generally, the relative riskiness of a specific investment does not render such investment either *per se* prudent or *per se* imprudent, and (2) the prudence of an investment decision should not be judged without regard to the role that the proposed investment...plays within the overall plan portfolio."⁵

The closing of the gap between the old prudent person rule and the modern standard of care was reconfirmed as recently as 1988 by a United Kingdom court decision in which the judge referred to the 1886 statement quoted above as follows: "This is an extremely flexible standard capable of adaptation to current economic conditions and contemporary understanding of markets and investments. For example, investments which were imprudent in the days of the gold standard may be sound and sensible in times of high inflation. Modern trustees acting within their investment powers are entitled to be judged by the standards of current portfolio theory, which

emphasizes the risk level of the entire portfolio rather than the risk attaching to each investment taken in isolation. (This is not to say that losses on investments made in breach of trust can be set off against gains in the rest of the portfolio but only that an investment which in isolation is too risky and therefore in breach of trust may be justified when held in conjunction with other investments.) But in reviewing the conduct of trustees over a (long period of time), one must be careful not to endow the prudent trustee with prophetic vision or expect him to have ignored the received wisdom of his time."⁶

By what standard is prudence measured?

The focus has shifted from each particular investment to the Administrator and his agents, the portfolio, and the investment objectives as set out in the Statement of Investment Policies and Goals (SIP&G). To quote from Bevis Longstreth, a former Securities and Exchange Commission commissioner and author on the subject, "**Prudence is a test of conduct not performance.**....(A) paradigm of prudence (is) based above all on process. Neither the overall performance of the portfolio nor the performance of the individual investment should be viewed as central to the (prudence issue). Prudence should be measured principally by the process through which investment strategies and tactics are developed, adopted, implemented, and monitored. Prudence is demonstrated by the process through which risk is managed rather than by the labelling of specific investments as either prudent or imprudent. Investment products and techniques are essentially neutral; none should be classified prudent or imprudent *per se*. It is the way in which they are used, and how decisions as to their use are made, that should be examined to determine whether the prudence standard has been met....Prudence is not self-evident. Nor will it be enough to point to their use by other fiduciaries. What matters is not that others have used the product or technique (for whatever reasons), but the basis for its use by the fiduciary in question."⁷

Although this formulation of prudence has been made in the context of United States trust law, it is clearly applicable in complying with the PBA, 1987. An object of the new Ontario rules is to authorize pension funds to use modern portfolio management techniques and tools, and to modernize and liberalize the concept of prudence. This shows up in subsection 63(2) of the Regulation, quoted at the end of this article, whose purpose is to have an investment selection made with consideration given to the overall context of the portfolio, keeping in mind that the selections match the objectives established for the portfolio in the SIP&G.

Despite the replacement of the "legal for life"

approach to investment, and the removal of quality tests and the "basket clause", the Regulation has retained certain specific limits pertaining to diversification, control of individual companies, and conflicts of interest. The mere compliance with these limits will not be considered evidence of the minimum standard of prudence. Notwithstanding these limits, all investments have to be made in accordance with the stipulations of the PBA, 1987, the Regulation, and the SIP&G. As stated above, it is the process followed in making the investments that will be examined to monitor the standard of care applied to the process.

Finally, subsection 23(2) of the PBA, 1987 stipulates that an Administrator must apply all the relevant knowledge and skill that he or she possesses or ought to possess by reason of his or her profession, business or calling. It is therefore incumbent on Administrators and their agents, especially investment managers, to keep abreast of developments in investment theory, practices and tools, and to make a conscious study of whether their use are applicable to the achievement of the investment policies that ought to be adopted by a pension fund given the nature of the plan and its liabilities.

¹ L. J. Lindley, *Re Whiteley* (1886) 33 Ch D 347, 355

² Justice Putnam, *Harvard College v. Amory*, Supreme Judicial Court of Massachusetts, 9 Pickering 446 (1830).

³ Employee Retirement Income Security Act of 1974 as amended through 1984, Section 404(a)(1)(B).

⁴ *Idem*, Sec. 404(a)(1)(C).

⁵ U. S. Department of Labor, 44 Federal Regulations 37,221 and 37,222, June 26, 1979.

⁶ Justice J. Hoffman, *Nestle v. National Westminster Bank Plc*, unreported decision of the Chancery Division of the High Court, U. K., dated June 29, 1988.

⁷ Bevis Longstreth, *Modern Investment Management and the Prudent Man Rule* (1986, Oxford University Press, New York).

respect to the requirement for the consent of the Superintendent to the transfer.

Q. What is the process for paying administrative expenses out of a pension plan which is in the process of winding up?

A. Subsection 71(2) of the PBA, 1987 prohibits an Administrator from making any payments out of the fund except in accordance with a wind up report approved by the Superintendent. Paying administrative expenses out of the plan (where the plan provides for this) however, is an exception to this rule. An interim account of administrative expenses, along with a request for the Superintendent to authorize payment, should be prepared by the Administrator and sent to the Pension Officer in charge of the wind up. Consent will normally be given promptly in writing.

Q. We have found a defined contribution plan just doesn't deliver a level of pension benefit that is satisfactory and adequate. Can a plan be converted from a defined contribution plan to a defined benefit plan?

A. There are quite a number of plans that seem to be forming a similar conclusion judging from the number of enquiries we have received lately. Yes. A plan may convert from defined contribution to defined benefit. Any Administrator interested in converting his plan should contact a pension consultant or other professional in this regard.

Q. Is it mandatory that employees be members of the pension plan?

A. When a company establishes a pension plan, subsection 10(1)2 of the PBA, 1987 requires that the plan documents set out the conditions for membership. The plan can be established to make it either mandatory or voluntary for all employees to be members.

In the case of mandatory membership: it is mandatory for all employees in the class of employees for whom the plan is established - an individual employee does not have a choice of voluntary membership that the other employees do not have. Section 26 of the PBA, 1987 requires that the Administrator give the employees, in writing, an explanation of the plan and the rights/obligations that come with being members.

In the case of a voluntary plan: the employee can decide whether or not to join after having received from the Administrator all relevant information. It should be noted, however, that in a pension plan with voluntary membership, once a full-time employee has met any requirements for membership and chooses not to become a member he must still be permitted to become a member of the plan should he change his decision in the future. Part-time employees may have to requalify should they

Commonly Asked Questions

Q. If an agreement of purchase and sale was entered into prior to January 1, 1988 (the date of proclamation of the PBA, 1987) with a closing or effective date prior to that date, but the transfer of the assets of a pension plan pursuant to the agreement was not completed prior to January 1, 1988, does the PBA, 1987 or its predecessor, the Ontario Pension Benefits Act, 1980 apply in respect of the consent of the Superintendent to the transfer?

A. PCO staff take the position that in these circumstances, the provisions of the PBA, 1987 apply with

defer joining. For information on voluntary suspension of membership, see "Commonly Asked Questions" in the PCO Bulletin, Issue 1.

Q. What is the difference between a contributory and non-contributory pension plan?

A. A contributory pension plan requires the employees to pay into the plan from their salary (the employees' pay stub would show that money was taken out of their pay to go into the pension plan). In a non-contributory pension plan only the employer contributes.

Q. Is an insurance company the Administrator of the portion of the pension plan covered by guaranteed annuity contracts?

A. No. Sponsors and consultants have posed an example where they believe that an insurance company may be the Administrator for one portion of the benefits (e.g. guaranteed annuity contract), and the plan sponsor is the Administrator for the remaining benefits not guaranteed by the insurance company. Subsection 8(d) of the PBA, 1987 specifies that for an insurance company to be the named Administrator all pension benefits must be guaranteed by the insurance company. In the example, not all the benefits are guaranteed by the insurance company, therefore it is only the plan sponsor, not the insurance company, who should be the named Administrator.

Q. How long does the employer have to provide a termination statement and comply with the selection in the case of (a) termination employment, (b) retirement, and (c) refund of contributions?

A. (a) According to section 37 of the Regulation, a termination statement in the case of an entitlement to a deferred pension must be provided to the terminated member within 30 days following the termination of employment or cessation of membership in the plan. If notice of termination or cessation is not provided by the member to the Administrator prior to the event, then the termination statement must be provided by the Administrator within thirty days after the receipt of notice from the member. If the former member elects to transfer the commuted value of the benefit, subsection 17(2) of the Regulation requires the Administrator to comply within 60 days after receipt of the completed election.

(b) In the case of retirement (section 40 of the Regulation), the Administrator must inform the retiring member at least sixty days prior to the normal retirement date of any options respecting payment of the pension and the time period in which the options may be exercised. If the Administrator does not have prior notice of the retirement, the termination statement must be

provided within thirty days following the Administrator's receipt of the notice. There is no time-limit within which the Administrator must comply with the member's selection; however, the PCO expects all Administrators to act in a timely fashion.

(c) In the case of a refund of contributions (section 38 of the Regulation, applicable only where the member is neither retiring nor entitled to a deferred pension), the time-limit for providing the termination statement is the same as in example (a). Subsection 38(4) of the Regulation requires that the Administrator comply with the selection within sixty days after receipt of the completed option sheet from the member.

Q. Are summer students eligible for membership in a pension plan as part-time employees?

A. Generally no. Summer students clearly terminate their employment relationship and do not fall under the definition of "continuous employment" in section 1 of the PBA, 1987. The statutory requirement for membership in a pension plan is based on continuous employment, or a fraction thereof for part-time employees. However, this statutory requirement does not prohibit a pension plan from providing immediate plan membership to all employees, including summer students.

Financial Statements for Pension Plans— Fund Statements or Plan Statements?

AN ADMINISTRATOR of a pension plan is required to file with the PCO financial statements for the pension fund or the pension plan annually. The requirement is found in section 72 of the Regulation. Such financial statements must be accompanied by an auditor's report if, at the fiscal year end of a pension plan, the plan has fifty or more members or \$1,000,000 or more in assets calculated at market value, pursuant to subsection 72(2) of the Regulation.

Prior to the PBA, 1987 going into effect on January 1, 1988 no such regulatory requirement existed. As a matter of practice, however, the PCO had required submission of a statement of assets by each plan on a triennial basis if the plan's assets were invested outside of deposit administration general funds contracts and/or fully-insured contracts of life insurance companies.

The current Regulation permits the filing of

either **fund** or **plan** financial statements. This enables the Administrator to deal with - in notes or appendices - the wider concept of the plan as opposed to the more limited fund concept. The primary interest of the PCO is in financial statements for the pension fund since the purpose of the Regulation is to require disclosure respecting how the assets of the plan are being invested and how they are performing.

The PCO recognizes the value of financial statements for the plan in providing in one place relevant information concerning both the assets and liabilities of the plan. It is noted, however, that information as to the liabilities of the plan is available in other documents and reports filed with the PCO such as plan texts, actuarial reports and cost certificates. From the regulatory perspective, the chief user of the financial statements is the plan member who has the right to inspect them on request, as is the case with all other documents filed with the PCO. Therefore, the plan member has access to filed documents and may review all aspects of the plan and fund.

The PCO is concerned with the cost to plan sponsors or to the plan itself in the preparation of financial statements for pension plans rather than for pension funds, and with the discrepancy between the regulatory valuation of the liabilities of a plan and the view of such liabilities that is consistent with generally accepted accounting principles. The PCO is currently holding discussions with the Canadian Institute of Chartered Accountants, which has recently issued accounting recommendations for pension plans in its Handbook under section 4100.

Pension Industry-Related Organizations

THE CONSULTATION process plays a key role in the evolution of pension legislation and policy development. In the course of formulating and drafting the PBA, 1987, and more recently in framing proposals tabled by the government in the Consultation Draft released in March, 1989, there was active participation by certain pension industry-related groups and organizations. These groups provide a vital link, liaising with government, their constituents including plan sponsors and consultants, and one another; they contribute to and shape the course of pension policy and reform. Though this list is not comprehensive, it is an attempt to identify those key associations and organizations that may be of interest to readers of the PCO Bulletin.

This column will be updated periodically; if

there is an organization that should be included in future listings of "Pension Industry-Related Organizations" write to **The Editor, PCO Bulletin**. If you would like information on any of the organizations, please contact them directly.

Association of Canadian Pension Management (ACPM)

**1075 Bay Street
Suite 730
Toronto, Ontario
M5S 2B1**

President: Ms. Andrea Vincent

The ACPM, a voluntary, non-profit organization, was formed in 1976 to act as a catalyst, resource and problem-solving medium for those individuals engaged in pension management and employee benefit activities with corporations, associations and professional organizations throughout Canada. ACPM's main objective is to provide opportunities and programs designed to assist its members in the resolution of specific pension management problems, and with the development of member knowledge and competence in their particular areas of responsibility.

The ACPM Board appoints a committee from among its membership to review proposed pension policy as the need arises. For information contact Andrea Vincent at (416) 964-1260.

Canadian Bankers' Association

**P.O. Box 348
2 First Canadian Place
Suite 600
Toronto, Ontario
M5X 1E1**

**Coordinator, Public and Media Relations:
Ms. Shelley Jourard**

The Canadian Bankers' Association serves the chartered banks of Canada in matters of concern to the whole industry. Its main activities relate to the fields of legislation, education, publications, public relations, information, research and bank security.

For information on pensions contact Suzanne Bergeron at (416) 362-6092.

Canadian Bar Association (CBA)

**50 O'Connor Street
Suite 902
Ottawa, Ontario
K1P 6L2**

**Senior Director, Communications:
Mr. Stephen Hanson**

The CBA is the national volunteer association for the legal profession in Canada comprised of more than 38,000 lawyers, notaries, judges, law professors and students. It is dedicated to the improvement of law, the administration of justice and the improvement of the learning skills of the individual lawyer. The national office is maintained in

Ottawa, and branch offices are located in the ten provinces and two territories.

Canadian Bar Association - Ontario
120 Adelaide Street West
Toronto, Ontario
M5H 1T1

Director, Communications: Mr. Peter Waite

The Canadian Bar Association - Ontario (CBAO) includes 16,000 of Canada's 38,000 lawyers. Any consultation in respect of a provincial statute is the responsibility of the provincial Bar Association. Sean Weir of Borden & Elliot, Toronto, Ontario chairs the Pension and Benefits section which comments regularly on pension policies and issues. For information contact Peter Waite at (416) 869-1047.

Canadian Institute of Actuaries (CIA)
360 Albert Street
Suite 1040
Ottawa, Ontario
K1R 7X7

Executive Director: Mr. Brian Wooding

The CIA is the professional body of actuaries in Canada. It was established by an Act of Parliament in 1965. The Institute consists of nearly 1,600 Fellows and approximately one-third of these Fellows work in the pension field.

A national committee consisting of approximately 14 actuaries (at least 3 are Ontario actuaries) called the Committee for Liaison With Government Authorities on Pension Matters consults extensively on pension policies and issues. The current Chairman is David Short of Eckler Partners. For information contact Brian Wooding at (613) 236-8196.

Canadian Institute of Chartered Accountants (CICA)
150 Bloor Street West
Toronto, Ontario
M5S 2Y2

General Director, Operations:
Mr. A. Morris Findlay

The CICA with a membership of more than 48,000 CAs, 13,000 students and a full-time staff of 150, is the oldest and largest national body of professional accountants in Canada. The profession comments extensively on legislation concerning business and corporations, bankruptcy, financial institutions and, of course, pensions. As part of its responsibilities the CICA sets national accounting and auditing standards through two separate committees: The Accounting Standards Committee and the Auditing Standards Committee in both the private and public sectors. The CICA expresses the profession's viewpoint on matters of public concern, provides national communications and public relations, and represents the profession internationally.

The Institute of Chartered Accountants of Ontario (ICAO)
69 Bloor Street East
Toronto, Ontario
M4W 1B3

Director of Professional and Technical Services: Mr. Bill Harper, CA

The ICAO was founded in 1879, chartered in 1882 and is the sole qualifying body for licensing under the Public Accountancy Act. Under the Chartered Accountants Act, the ICAO is a self-regulating body with approximately 23,000 members and 6,000 students and is responsible for education, standards monitoring, and discipline including oversight for professional conduct issues and standards. For information contact Bill Harper at (416) 962-1841.

Canadian Life and Health Insurance Association Inc. (CLHIA)
20 Queen Street West
Suite 2500
Toronto, Ontario
M5H 3S2

Vice President, Life Insurance & Annuities:
Mr. Frank Speed

The CLHIA is a voluntary trade association of 110 life insurance and health insurance companies doing business in Canada. Member companies have on their books approximately 99 percent of the life insurance, health insurance and annuity business of insurance companies operating in Canada. Virtually all of the life insurance companies active in the pension business in Canada are members of the Association.

There are two committees consulting on pension policy issues and members are drawn from national Association membership. The Committee on Pension Policy addresses broad policy issues. The Committee on Private Pension Plans is concerned with technical and administrative matters. For information contact Frank Speed or Mahmood Mohiuddin at (416) 977-2221.

Canadian Pension Conference (CPC)
800 Rene-Levesque Blvd. West
Suite 1100
Montreal, Quebec
H3B 1X9
Executive Director: Mr. Gilles Triganne

Canadian Pension Conference
(Ontario Region)
52 River Street
Toronto, Ontario
M5A 3N9
Chairman: Ms. Edith Galloway

The CPC is a non-profit organization, established in 1960 and incorporated under federal charter in 1978. The main objectives of the CPC are (1) to assess and monitor pension policies at the national

level through working committees and (2) to educate and promote understanding of income security and employee benefit matters in Canada. Regional forums feature program, legislative update and member committees open to all interested individuals and organizations. In addition to pensions, the CPC deals with topical issues relating to all aspects of income security and benefit programs. Membership is individual and voluntary with representation from industry, finance, government, labour, consulting firms, insurance and trust companies, professional groups and other non-profit organizations. For information contact Gilles Triganne at (514) 866-3687.

Ontario Federation of Labour (OFL)

**15 Gervais Drive
Suite 202
Don Mills, Ontario
M3C 1Y8**

Research Director: Mr. John O'Grady

The OFL is the central labour body in which union locals unite to further their aims and objectives. From its inception in 1957, the OFL has grown to represent some 800,000 Ontario workers in more than 2,000 affiliated local unions. Union locals democratically determine whether or not to join the Federation. Members of the Executive Board chair various OFL standing committees that supervise ongoing policy concerns including: pensions, human rights, labour relations, education, women, and workers' compensation.

The Committee on Pensions and Pension Policy is comprised of 23 members and chaired by Glenn Pattinson. For more information contact John O'Grady at (416) 441-2731.

Trust Companies Association of Canada Inc. (TCA)

**50 O'Connor Street
Suite 720
Ottawa, Ontario
K1P 6L2**

President & CEO: Mr. John Evans

The membership of the TCA is comprised of 36 trust companies plus affiliates and subsidiary deposit-taking institutions of member companies. The TCA identifies the trust industry's interests and needs and offers a forum where member companies may be represented and participate with government in shaping the future of the financial services industry. TCA personnel monitor government initiatives, anticipate government policy direction and assist in shaping this direction in consultation with representatives of member companies. For information on pensions contact Denise Costello at (613) 563-3205.

Appointment of Administrators

PURSUANT TO SECTION 72

of the PBA, 1987, the Superintendent of Pensions has appointed Administrators to wind up the pension plan(s) of the following companies. These Administrators were appointed owing to the insolvency of the companies.

The Superintendent will appoint outside trustees from an established panel of licensed trustees where the matters are complex or there are a large number of pension plan members involved.

<u>Company*</u>	<u>Administrator</u>	<u>Date of Appointment</u>
Advance Power (1984) Inc. (2)	Superintendent of Pensions	04/18/88
Atwell Fleming/Young Ltd. (2)	Peat Marwick Thorne Inc.	02/19/90
Austroquip Mfg. Ltd. (1)	Superintendent of Pensions	01/06/88
Canrep Morse Inc. (1)	Price Waterhouse Limited	04/17/89
Cygnus Industries Inc. (1)	Deloitte & Touche Inc.	02/23/90
Hiawathaland Hotels Limited (2)	Superintendent of Pensions	04/25/90
International Malleable Iron Company Limited (2)	Ernst & Young Inc.	02/13/90
Massey Combines Corporation (2)	Price Waterhouse Limited	04/06/88
Maybank Foods Inc. (1)	Coopers & Lybrand Limited	01/05/90
Red Carpet Distribution Inc. (2)	Price Waterhouse Limited	09/09/88
Savage Shoes Limited (2)	Deloitte & Touche Inc.	04/24/90
Sunar Hauserman Ltd. (4)	Price Waterhouse Limited	02/14/90
T.A.G. Apparel (7)	Coopers & Lybrand Limited	03/26/90

* the number in brackets indicates the number of pension plans involved

Proceedings Before the Commission

ON JUNE 27, 1990, the PCO will hear an application brought by the **Canadian Union of Public Employees, the Ontario Public Service Employees Union and the Service Employees International Union** (the "Unions"). The respondent is the **Ontario Hospital Association** (the "OHA").

The preliminary issue to be decided by the Commission is whether or not the Commission has the jurisdiction to require a hearing resulting from the Superintendent's refusal to make an order pursuant to section 88 of the PBA, 1987 to compel the OHA to comply with clause 8(1)(e).

The Commission's decision in this matter will be reported in a future issue of the PCO Bulletin.

Decisions

Commission Decisions - Applications Approved since January, 1990

Applications Approved Under Clause 7a(2)(a) of the Regulation

The Commission has delegated to the Superintendent the power to approve applications under clause 7a(2)(a) of the Regulation. These applications routinely provide for increases in benefits to the plan members which have the effect of reducing the surplus to nil.

Applications Approved Under Clause 7a(2)(b) of the Regulation - Surplus Withdrawal on Wind Up

At the Commission meeting held February 15, 1990, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

a) **Birsay Mesh Limited (C-14367)**

Refund of plan surplus amounting to \$164,751 to the employer.

b) **Burns Fry Limited (C-100985)**

Refund of plan surplus amounting to \$152,526 with interest to the employer.

c) **Burns Fry Limited (C-100615)**

Refund of plan surplus amounting to \$30,163 with interest to the employer.

d) **Chemroy Chemicals Limited (C-18642)**

Refund of plan surplus amounting to \$10,000 to the employer.

e) **Chemroy Chemicals Limited (C-15659)**

Refund of plan surplus amounting to \$17,900 to the employer.

f) **Kwikie Minit Market Limited (C-16040)**

Refund of plan surplus amounting to \$66,464 plus interest to the employer.

Applications Approved Under Clause 7a(2)(c) of the Regulation - Requests for Return of Surplus Pursuant to a Court Order

At the Commission meeting held April 26, 1990, the Commission consented to filing with the court a consent under subsection 79(1) of the PBA, 1987 and clause 7a(2)(c) of the Regulation to the refund of plan surplus.

a) **H.I. (Canada), Inc. (C-15223)**

Refund of plan surplus in the amount of \$362,315 plus the applicable interest adjustment to date of distribution, to the employer.

Applications Approved Under Subsection 64(7) of the PBA, 1987 - Requests for Return of Member Contributions

At the Commission meeting held February 15, 1990, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

a) **Burns Fry Limited (C-100972)**

Refund of member required contributions in the aggregate amount of \$20,498.

b) **Burns Fry Limited (C-100983)**

Refund of member required contributions in the aggregate amount of \$119,774.

c) **Burns Fry Limited (C-100985)**

Refund of member required contributions in the aggregate amount of \$137,789.

d) **Wm. Roberts Electrical & Mechanical Ltd. (C-6493)**

Refund of member required contributions in the aggregate amount of \$90,530.

At the Commission meeting held March 22, 1990, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

a) **ADM Agri-Industries Ltd./UCO Elevator (C-102384)**

Refund of member required contributions in the aggregate amount of \$23,375.36 as of July 31, 1989, plus interest.

b) **Fairchild Semiconductor Canada Inc. (C-17804)**

Refund of member required contributions in the aggregate amount of \$96,154.94.

At the Commission meeting held **April 26, 1990**, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

a) **Bissell Ltd. (C-1081)**

Refund of member required contributions in the aggregate amount of \$52,791 as of December 31, 1987 plus interest in respect of Executive Committee members and to the refund of member required contributions in the aggregate amount of \$25,960 as of December 31, 1988 plus interest in respect of other members.

b) **G.N. Johnston Equipment Company Limited (Ltee) (C-2167)**

Refund of member required contributions in the aggregate amount of \$100,100.

Notices of Proposal to Make a Declaration Issued by the Commission

PBGF Declarations

The Acting Chairperson issued a Notice of Proposal to Make a Declaration under section 84 dated **March 22, 1990** for the following pension plans:

- Pension Plan for SunarHauserman and United Steelworkers of America, Local 3292.
- Pension Plan for SunarHauserman and United Steelworkers of America, Local 7657.

Superintendent's Decisions

Notices of Proposal to Make an Order

Wind Up Orders

The Superintendent issued a Notice of Proposal to Make an Order under section 70 of the PBA, 1987 dated **March 20, 1990** for the following pension plans:

- International Malleable Iron Company Limited Negotiated Pension Plan.

- Pension Plan for Salaried Employees of International Malleable Iron Company Limited.

- Pension Plan for SunarHauserman and United Steelworkers of America, Local 3292.

- Pension Plan for SunarHauserman and United Steelworkers of America, Local 7657.

- Non-Bargaining Salaried Employees of SunarHauserman Retirement Income Plan.

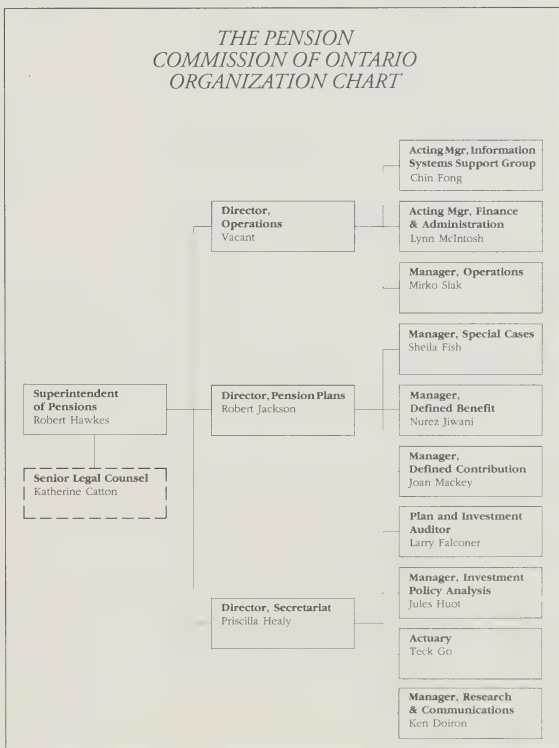
The Superintendent issued a Notice of Proposal to Make an Order under section 70 of the PBA, 1987 dated **April 4, 1990** for the following pension plan:

Atwell Fleming/Young Limited Pension Plan.

Other Orders

The Superintendent issued a Notice of Proposal to Make an Order under section 88 of the PBA, 1987 dated **April 4, 1990** for the following pension plan:

General Motors of Canada Limited, Canadian Hourly-Rate Employees' Pension Plan.



Contacts for PCO Enquiries

Actuarial	Teck Go	972-5799
Annual Information Returns	Rose Ann Drakes	972-5782
Communications	Judith Chalmers	972-5800
Financial Statements	Larry Falconer	972-5809
Freedom of Information Requests	Ken Doiron	972-5798
General Enquiry - Secretariat	Lynn Barron	972-5825
Policy Issues	Jerry Williams	972-5826
Mailing List	Lynn Barron	972-5825
PCO Bulletin/Compliance Assistance Guidelines	Judith Chalmers	972-5800
Pension Benefits Guarantee Fund (Administration)	Margaret Fennell	972-5785
Plan Registration - Forms		972-5784
Plan-specific Enquiry (state plan name and/or provincial registration no.)		963-0522
Registrar/Secretary to the Commission	Mary Crocker	972-5815
Statements of Investment Policies & Goals/Investment Policy Return	Jules Huot	972-5821

Note: Acronyms will be used throughout the PCO Bulletin and Compliance Assistance Guidelines to make the publications more readable.

AIR - Annual Information Return
CAPSA - Canadian Association of Pension Supervisory Authorities
CIA - Canadian Institute of Actuaries
CICA - Canadian Institute of Chartered Accountants
ISSG - Information Systems Services Group
FOIPOP - Freedom of Information and Protection of Privacy
IPR - Investment Policy Return
MFI - Ministry of Financial Institutions
OSC - Ontario Securities Commission
PBA, 1987 - Pension Benefits Act, 1987
PCO - Pension Commission of Ontario
SIP&G - Statement of Investment Policies and Goals

Are You On Our Mailing List?

Owing to increasing mailing and production costs the PCO anticipates not sending future Bulletins and Compliance Assistance Guidelines to our mailing list of registered plans (you are on this list if the mailing label shows your plan's provincial registration number). **If you would like to be on our supplementary mailing list to continue to receive the PCO Bulletin and Compliance Assistance Guidelines please write, or fax at 972-5812, to Lynn Barron, or call directly at 972-5825.** If you have already responded to this request your name has been added to the Bulletin and Guidelines mailing list and you may disregard this notice.

Although every effort has been made to ensure the accuracy of the material contained in this publication, it is provided for information purposes only. Acts and regulations mentioned in this publication may be reviewed in most public libraries or obtained through Publications Services, Ministry of Government Services, 880 Bay Street, Toronto, Ontario M7A 1N8.

The PCO Bulletin is published quarterly by the Pension Commission of Ontario, 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2 (416) 963-0522 FAX (416) 972-5812. Articles may be quoted with acknowledgement.

THE PENSION COMMISSION OF ONTARIO BULLETIN

September, 1990

Vol. 1, Issue 3



"Dialogue with the PCO" Conference Attracts Over 350 Participants

A CONFERENCE HELD on June 15, 1990 subtitled "A Look at Current Developments in Pension Regulation" attracted over 350 participants interested in learning about recent developments in provincial pension policy and federal tax reform.

The conference sponsors, Lexium Educational Services, reported that attendees included executives and senior management of major plan sponsors from across Canada and the United States, as well as pension consultants, advisers and agents.

There were also highlights of recent developments in federal tax reform reminding us of the continuing difficulty in fine-tuning provincial pension policy and federal tax policy. Further commentary was provided by leading pension consultants in a variety of sessions throughout the day. This article will focus on the speeches and messages delivered by PCO staff.

The Keynote Address

The morning sessions opened with a keynote address by Robert H. Hawkes, Q.C., Superintendent of Pensions, who addressed current policy issues, namely:

- surplus and the need to establish clear entitlement;
- the use of actuarial gains to reduce employer contributions as normal funding practice;
- issues relating to solvency valuation and the significant and new costs on sponsors of flat benefit pension plans with generous early retirement provisions;
- issues relating to pre and post 1988 actuarial gains and the possible interpretation of the Regulation that only post 1988 actuarial gains may be used to offset the required employer contributions for normal costs;
- the need for a reciprocal agreement to achieve uniformity and simplification of administration in multi-jurisdictional pension plans;



HIGHLIGHTS

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- accounting standards issues related to the question of auditing pension plans or pension funds only;
- ensuring the future viability of pensions and pension regulation through the co-operative efforts of regulators and pension professionals to achieve regulatory objectives;
- ensuring that pension professionals and consultants understand that their duty is to the Administrator of the pension plan who, in turn, has a fiduciary duty to the pension plan members; and
- improving methods of conducting business at the PCO to achieve compliance with the legislation including: filing, capturing and analyzing data and providing quality service to clients through timely responses to general enquiries and publication of the *PCO Bulletin* and *Compliance Assistance Guidelines*.

The Superintendent's speech, with its focus on current problems, indicated probable changes in the business of pension regulation.

Working With the PCO: Understanding Policy Making and the Decision-making Process

The first session dealt with decision-making processes as they pertain to policy and pension plan administration. Presentations were made by Priscilla Healy, Director, Secretariat and Nurez Jiwani, Senior Manager, Defined Benefits (appointed Director, Pension Plans Branch in July, 1990).

The remarks of the Director of the Secretariat—the policy development branch of the PCO—called for adoption of an attitude of greater openness on the part of regulators, consultants and plan sponsors. Historically, a paternalistic view has been taken toward pension plan members distancing them and preventing them from being informed about their financial affairs. She also noted that the sources for pressures against openness are historical, institutional and attitudinal.

Despite this deeply entrenched view, a rising tide of pressure for openness is being felt inside and outside government. The aging baby boom generation has begun to think seriously about retirement financial planning issues and the financial services sector has responded with a host of attractive financial products and services. In turn, media interest was sparked by market innovations and coverage of retirement financial planning issues and pensions in the press has been so widespread that these topics are better understood than at any other time. There continues to be increasing demand for personal financial planning information and education.

The impact of huge pension funds on the capital markets, the existence of surplus in some funds and the question of entitlement to it has

caught the attention of pension plan members and their representatives. Recent court decisions involving pension issues and surplus have also highlighted the issue of surplus ownership.

An attitude favouring openness also has occurred in government: the shift towards greater accessibility and openness to information maintained in government files is codified in the Freedom of Information and Protection of Privacy Act.

Ms. Healy then described ways in which the PCO is trying to be more open and responsive to the needs of the pension industry especially with respect to the policy-making process. The PCO commitment is apparent through greater staff accessibility and improved client service levels. Staff respond daily to numerous enquiries for general information, direction on general policy issues, and more expeditious treatment of specific policy questions affecting plan administration or corporate business activities.

A method and structure for processing and resolving outstanding policy issues has been refined. The process varies depending on the nature, complexity and extent of the policy issue. However, to function well, the policy issues processing system requires quality input from the requester including detailed and reasoned discussion of the issues.

The formation of three new Pension Advisory Committees to the PCO was announced: legal, actuarial and auditing advisory committees will provide policy and technical input and consultation reflecting current industry practice. The result is expected to be quality and timely policy-making. The use of professional advisory committees is not intended to displace industry-wide consultation when that is warranted in the circumstances.

The impact of Commission decisions on the development of pension policy was also referred to as was the important distinction between legislative and interpretative policy. Interpretative policy refers to the interpretation of the legislation by the Commission or PCO staff; this sometimes takes the form of administrative practices and policy statements. Legislative policy on the other hand relates to the amendment of legislation. It is the means of resolving major policy issues with social, economic or legal implications. This distinction defines the limit of policy-making by civil servants; major policy issues are decisions to be made by legislators.

In closing, Ms. Healy emphasized that all participants have an individual and collective interest and responsibility to encourage plan members to become more knowledgeable about their pensions. As pension plan members increase in knowledge and participate in pension plan administration, they will better understand the issues related to their own retirement financial planning, and as well, those faced by employers.

Understanding Regulatory Administration and the Decision-making Process

The remarks of Nurez Jiwani dealt specifically with administrative issues faced daily by Administrators and branch staff.

The decision-making process in the Pension Plans Branch is driven by three major legislative requirements:

- 1) the filing of documentation which monitors plan membership, funding and investments on an annual basis;
- 2) the registration of pension plans that meet minimum standards on establishment and subsequent amendment; and
- 3) obtaining consent of the Superintendent or Commission in respect of applications for asset transfer on sales, mergers, re-organization, plan wind ups, surplus refunds, refunds of employer overpayments and employee contributions.

Following a description of the organization of this largest branch of the Commission, Mr. Jiwani reviewed specific legislative requirements and processes for:

- 1) the registration of new plans;
- 2) making amendments to pension plans;
- 3) obtaining Superintendent consent with respect to:
 - transfer of assets on the sale of a business;
 - plan mergers;
 - plan wind ups; and
 - other circumstances as applicable.
- 4) obtaining Commission consent with respect to:
 - surplus refunds to employers on plan wind up;
 - refunds of an overpayment to the employer; and
 - refunds of required employee contributions.

The Impact of Recent Federal Legislative Initiatives on Pension Plans in Ontario

In this session, Jules Huot, Manager, Investment Policy Analysis in the Secretariat identified policy conflicts between pension tax reform and the PBA, 1987 and he outlined existing means by which solutions may be found between the federal and provincial governments.

Turning to recent developments relating to investment issues, he described the doubling of the maximum on foreign property that may be held in pension funds. Mr. Huot also indicated that vendors of new investment products are approaching regulators to seek approval for their products in meeting the test of prudence. Mr. Huot reminded

attendees of the discussion of prudence in the second issue of the PCO Bulletin which indicated that no investment is prudent *per se*, but can be judged only in the context of the overall portfolio. The question Administrators must ask is: do proposed investment selections appropriately fit the fund given the nature of the liabilities of the plan? Furthermore, Administrators must state in their Statements of Investment Policies and Goals whether they want to use the new investment products, and for what purposes.

He also mentioned that one way to participate in these new vehicles is through partnerships. In that case, he warned that partnerships may fall under foreign property in the Income Tax Act rules, and that Administrators should be aware of this.

Mr. Huot also discussed the use of letters of credit as collateral for securities lending by pension funds. Although the use of letters of credit is a common business practice, letters of credit are not permitted under the PBA, 1987. (Please refer to the Administrative Practices section of this issue of the PCO Bulletin for more information on Letters of Credit.)

Dealing With and Managing Pension Plan Surplus Issues in Ongoing Plans, Mergers, Transfers and Wind ups

This session examined a fictional business scenario and proposed ways of dealing with and managing pension plan surplus issues in stated circumstances: ongoing plans, mergers, transfers and wind ups. A panel composed of an actuarial consultant, lawyer and regulator explored the opportunities, outlined the likely courses of action and explained pitfalls from their various perspectives.

The luncheon address was given by the Honourable Murray Elston, Minister of Financial Institutions, who announced proposed regulations to be made after consultation with representatives of management and labour.

An afternoon session entitled "Dialogue With the PCO" included an address by the only plan sponsor on the conference dais. Ian Bovey, Northern Telecom Canada Limited spoke from the plan sponsor's viewpoint and forecast the dangerous consequences of too much administration and complexity in administration.

Written questions from the floor were presented by conference chairmen for the opinion of the Superintendent of Pensions. A number of these will be reflected in the Questions and Answer section of this and subsequent issues of the PCO Bulletin.

During this session, the Superintendent announced the Minister's stated intention to extend the time for filing restated plan texts in compliance with section 19 of the PBA, 1987 for one year, which, in most cases will be the end of 1991, in order to correspond with Revenue Canada's re-

quirements. The extension, as contemplated, would also apply to subsections 80(2) and (5).

Staff of the PCO were pleased with the opportunity to discuss a variety of issues in an open forum. Although there continue to be difficult and pressing issues facing plan sponsors, pension practitioners and regulatory authorities, lines of communication and consultation are now more than ever firmly established with interested parties. Though effective policy-making depends on many considerations, a framework of greater openness and exchange of ideas will undoubtedly impact and make significant contributions to the pension regulatory process.

A Speech by PCO Chairman, Joseph Regan — The Issue is Coverage

"I am unabashedly in favour of quality pension plans and a greater number of Ontario citizens benefiting from pension coverage. It is a highly desirable social goal, a highly desirable economic goal and certainly a highly desirable political goal; we will aspire to encourage quality pension plans but with careful regard for the views of our various client groups."

THUS, JOSEPH REGAN

opened his first official speech as Chairman of the PCO at the May 16th Pension Tax Reform Seminar hosted by consultants William M. Mercer Limited at the Metro Toronto Convention Centre. (Mr. Regan was appointed Chairman of the PCO in May, 1990.) He reviewed the PCO's mandate highlighting the responsibility to "promote the establishment, extension and improvement of pension plans throughout Ontario."

Since the PBA, 1987 was enacted, the activities of the PCO have been focused on administering pension reform and protecting existing pension benefits.

*"In the face of new and complex legislation, my colleagues rightly attacked the issue of **protecting pension benefits first** by endeavouring to ensure that consultants and plan sponsors understood the requirements of the new legislation."*

Mr. Regan noted, however, that the PCO is directing some of its current activities toward the goal of pension plan coverage. He emphasized that "for the past several years pension coverage has hovered at 40% of Ontario's labour force - only 1.8 million of Ontario's 4.5 million labour force."

The findings of a research study commissioned by the PCO confirmed some barriers that prevent expansion in the Ontario pension system which were already suspected. The study confirmed that:

- younger and more mobile workers are less likely to be covered
- workers not covered by collective agreements are less likely to belong to a pension plan
- workers with annual incomes below \$20,000 are less likely to be covered
- part-time workers are less likely than full-time workers to have pension coverage
- workers with lower levels of education have a lower pension coverage ratio
- firms with fewer than 100 employees are less likely to provide employer-sponsored pension plans

As Mr. Regan pointed out, "the main problem that emerges from this exercise is that a minority of Ontario citizens and only those in reasonably well-paying jobs will be looked after throughout their retirement; but many people—a large percentage of them women—will have little to retire on." With findings such as these, Mr. Regan announced that expansion of the employer-sponsored pension system is a priority of the PCO.

Turning his attention to the PCO's regulatory role, he noted that:

"as our information technology systems are phased in over a three year period, we will be able to significantly improve our systems. One objective is to develop a single annual information filing to replace all other annual reporting requirements...If we can make everyone's lives easier, we would expect a greater number of companies would wish to make available quality pension plans to their employees."

He also emphasized that the PCO Bulletin and Compliance Assistance Guidelines were developed to "establish a vital two-way communications link between regulators, policymakers and practitioners." Mr. Regan encouraged the industry's continuing participation in the consultation process for effective pension policymaking.

A Message from the Superintendent of Pensions

The Legal Effect of Pension Plan Registration

REGISTRATION OF A pension plan with the PCO becomes effective when the Superintendent of Pensions issues a certificate of registration. In the case of a **plan amendment**, registration is effective when the Superintendent issues a notice of registration of a plan amendment. The requirements for such registration are found under sections 16 and 17 of the PBA, 1987.

The question which arises from time to time from pension practitioners concerns the legal effect of such registration. Is the purpose of the registration to confirm that the plan and the amendments are in strict conformity with the PBA, 1987 and Regulation? Or, is the purpose to accept the plan and amendments for filings and make them available for inspection by interested parties to the pension deal: for instance, plan members, beneficiaries and bargaining agents?

Registration constitutes notice that the plan contains the contractually required terms. We accept applications for registration of pension plans or amendments based on a certificate of compliance with the PBA, 1987 which is signed by the Administrator. The Superintendent and staff do not undertake to examine each detail of the plan. Our role is to assure that the minimum standard for information disclosure is addressed as required by section 10 of the PBA, 1987.

To achieve the objective of compliance, a checklist must be completed and returned with the application. In this way, the Administrator and the PCO staff reviewing the application are assured that the minimum standards are met and a certificate of registration can be issued.

Verification of Compliance

Staff have taken every opportunity recently to indicate that changes will be made to the way the PCO conducts its business of regulating the occupational pension system in Ontario. In order to meet the challenges of the 90's, regulators will rely increasingly on Administrators and their agents to perform their duties in accordance with the legislation, in a timely fashion and accurately. Finally, they will be expected to certify that they are in full compliance.

The PCO will also rely more on information technology to monitor AIRs, cost certificates, audit reports and assessments to ensure that:

a) they have been filed on a timely basis;

- b) they cross check for information; and
c) selected filings are subject to manual review.

Time previously spent in manual review of plan filings, amendments and other documents will be devoted to on-site plan examinations. When we implement these operational changes staff resources will become available for on-site plan examinations. Our goal is that over a period of three years, plans representing 75% of members will have been examined by PCO staff.

The primary purpose of these examinations is to assure that plans are being administered in accordance with the PBA, 1987. Recent experience with certain plans (for which Administrators were appointed) demonstrates that record keeping of members' entitlements is often inaccurate. We have found that remittances to the pension fund were not filed on a timely basis and in some cases, required pension contributions were deliberately withheld from the trustee or insurance carrier.

The majority of Administrators do a proper job of complying with the legislation in a timely manner. Nevertheless, it is necessary for PCO staff to determine what is happening on an inspection basis; only in this way can we be sure that an adequate job of regulation is being done and that plan members' benefits are protected.

The process of inspection has begun with a review of all plans for delinquent AIRs and triennial reports/triennial cost certificates. This inspection (it is being carried out in order ensure compliance and to bring our information up-to-date prior to its transfer to computer) has triggered letters to 47% of plans. Of those who have not filed, 32% have delinquent AIRs, 34% have delinquent triennial filings, and many have both. The PCO is committed to obtaining all outstanding filings and to ensuring future filings are made on time. If you are a pension plan Administrator who has been notified of a delinquency, we urge you to make your required filings as soon as possible. If your filing has already been made, please advise us accordingly.

*Robert H. Hawkes
Superintendent of Pensions*

A Message from the Director of the Secretariat

WE HAVE BEEN very pleased with our readers' response to the PCO Bulletin and Compliance Assistance Guidelines which were launched in February, 1990. The proof of your interest is in our constantly expanding mailing list. After publication of each issue and

guideline, we conduct an extensive review to look for ways to improve the product and better serve our audience. The time has come to ask for your feedback, comments and opinion on what we have published and what you would like to see in future issues.

In the next issue of the Bulletin, we will be conducting a readership survey designed to obtain your views and ratings on a variety of topics related to the content, presentation and utility of the Bulletin and Compliance Assistance Guidelines. Our objectives are to discover what pension practitioners like and dislike about the Bulletin and Guidelines and to determine what is needed to facilitate compliance, ease administration and improve communications between government regulators and the pension community.

I urge you to take a few minutes to complete the survey, and mail it to the PCO (postage paid). The results will be carefully reviewed and I am sure many of your ideas and suggestions will be implemented. I would like to thank you in advance for your participation in the readership survey.

Priscilla H. Healy
Director, Secretariat

Notices

Amendment to the Regulation Permits Access to Surplus in a Continuing Pension Plans if Special Stringent Conditions Are Met

THE REGULATION under the PBA, 1987 has been amended to allow plan sponsors and members access to surplus in ongoing pension plans in certain restricted circumstances where complete agreement between the parties has been reached. The amendment was filed on July 27, 1990.

The amendment enables plan members, retired members, persons entitled to deferred pensions and persons currently entitled to receive a benefit from the plan to negotiate a settlement with plan sponsors on the surplus issue. It provides an opportunity for parties to access and share surplus, improve benefits and provides for the indexing of benefits at the option of the member.

To access the surplus, stringent conditions and requirements must be met in addition to those requirements set out in the PBA, 1987. The legislation requires the pension fund to maintain a minimum reserve of surplus and, among other criteria, it requires obtaining the consent of the Pension Commission of Ontario.

The new regulation requires **consent of all** members, retired members, persons entitled to

deferred pensions and persons currently entitled to receive benefits from the plan to the terms for surplus withdrawal. Members can negotiate to use some of the surplus to improve the terms of the pension plan or provide for higher levels of benefits. The new regulation also requires resolution of the issue of future surplus entitlement.

As a condition for payment of surplus from an ongoing plan, the new regulation requires plan sponsors to apply the 50% rule (introduced in the PBA, 1987). This condition, to be applied to all benefits whenever they were earned, requires plan sponsors to fund 50% of the cost of the pension benefit.

The Regulation was published in *The Ontario Gazette* on August 11, 1990.

REGULATION TO AMEND ONTARIO REGULATION 708/87 MADE UNDER THE PENSION BENEFITS ACT, 1987

1. Ontario Regulation 708/87 is amended by adding the following sections:

7c.-(1) *The criteria described in this section must be met before the Commission may consent to the payment of money that is surplus out of a continuing pension plan to the employer.*

(2) *All persons who are entitled to receive benefits under the pension plan and all members must consent to the terms upon which the surplus is to be paid out of the plan.*

(3) *All persons in respect of whom the administrator has purchased a pension, deferred pension or ancillary benefit, other than those persons who requested that the administrator do so, must consent to the terms upon which the surplus is to be paid out of the pension plan.*

(4) *The pension plan must provide that a former member's contributions to the plan and the interest on the contributions shall not be used to provide more than 50 per cent of the commuted value of a pension or deferred pension in respect of contributory benefits to which the member is entitled under the plan on termination of membership or employment.*

(5) *The pension plan must provide that a former member who is entitled to a pension or deferred pension on termination of employment or membership is entitled to payment from the pension fund of a lump sum payment equal to the amount by which the former member's contributions under the plan and the interest on the contributions exceed one-half of the commuted value of the former member's pension or deferred pension in respect of the contributory benefits.*

(6) *The share, if any, of the surplus allocated to each person, other than the employer, must not be provided in the form of a cash refund.*

(7) *Despite subsection (6), a cash refund of*

contributions may be made in accordance with subsection 64(7) of the Act.

(8) If surplus is allocated to a person to increase the person's benefits, the person must be offered the choice of receiving the surplus in the form of inflation adjustments to the existing benefits.

(9) The inflation adjustments that are provided must be made,

(a) by indexing the benefits in accordance with a formula based upon increases in the annual Consumer Price Index;

(b) by providing an annual percentage increase in the amount of the benefits or an annual increase of a specified dollar amount; or

(c) by a combination of the methods described in clauses (a) and (b).

(10) For the purpose of subsection (9), the employer may select the method for providing the inflation adjustments.

(11) The pension plan must state who is entitled, or must provide a mechanism for determining who is entitled, to any surplus in the plan after the payment of surplus to which the Commission is being asked to consent.

(12) Subsection (11) applies with respect to applications under section 79 of the Act made after the 31st day of October, 1990.

23a. For the purpose of subsection 80(10) of the Act, the prescribed date is the day on which this section comes into force.

Advisory Committees Update

Since our report in the last issue of the PCO Bulletin, initial membership for the Actuarial and Legal Pension Advisory Committees has been established as follows:

Actuarial Advisory Committee

Chairman	Paul Saunders	GBB Buck Consultants Limited
Members	David Short	Eckler Partners Limited
	Owen O'Neil	TPF & C Limited
	Josephine Marks	Sun Life Assurance Company of Canada

The Actuarial Advisory Committee is a sub-committee of the CIA standing committee called the Liaison Committee With Government Authorities on Pension Matters. Additional members will be announced.

Legal Advisory Committee

Interim

Chairman	Sean Weir	Borden & Elliot
Members	Paul Baston	Fraser & Beatty
	Dona Campbell	Miller, Thomson
	Bonnie Flatt	William M. Mercer Limited
	Peggy McCallum	Baker & McKenzie
	Sheryl Smolkin	The Wyatt Company
	John Solursh	Blake, Cassels & Graydon
	David Vincent	Fasken, Campbell, Godfrey
	David Wentzell	McMillan, Binch

Interfirm Audit Discussion Group

A special purpose committee called the Interfirm Audit Discussion Group has also been established to advise on proposed regulatory amendments relating to financial reporting for pension plans in particular, and auditing issues.

Chairman	Bruce Winter	Price Waterhouse
Members	David Adams	Arthur Anderson & Co.
	Harvey Beadle	Dunwoody & Company
	Don Cockburn	Ernst & Young
	Bill Harper	Institute of Chartered Accountants of Ontario
	Ken Morano	Logos Financial Planning Inc.
	Vaike Murusalu	Canadian Institute of Chartered Accountants
	Jim Saloman	Coopers & Lybrand
	Greg Shields	Peat, Marwick, Thorne
	Bob Sterling	Deloitte, Haskins & Sells

Supreme Court of Ontario Releases Reasons for Firestone Decision

The Supreme Court of Ontario has ruled in favour of Firestone Canada Inc. and against the PCO and the United Rubber, Cork, Linoleum and Plastic Workers of America Local Union No. 113 on the issue of the application of the "grow-in" provisions

in subsection 75(1) of the PBA, 1987. The Court released the written reasons for judgement by Justice Sutherland on August 2, 1990.

The issue was whether Firestone employees who at the time the plant closed in 1988 had not met certain eligibility requirements for the pension plan's early retirement and plant closure benefits, could still become eligible for these benefits in the future. The decision of the Court was that if a plan member did not meet the plan's service criteria for such benefits at the date of plant closure, the member could not subsequently become eligible for these benefits.

The Pension Commission of Ontario announced on August 16, 1990 that it will appeal the Court's ruling. The Commission will ask the Court to expedite the appeal so that the benefits of the Firestone workers and the benefits of other workers facing similar pension plan wind ups may be resolved as soon as possible.

For copies of the written reasons for the Firestone Decision, please contact the Weekly Court Office at the Supreme Court of Ontario at 145 Queen Street West, Toronto, Ontario.

Workers' Compensation Amendment Act, 1989 Requires Pension Plan Amendments

The Worker's Compensation Amendment Act, 1989 (WCAA, 1989) was proclaimed and became effective on January 2, 1990.

The WCAA, 1989 has implications for all pension plans and Administrators are strongly advised to familiarize themselves with it. It may be necessary to amend your plan under the provisions of the PBA, 1987 to conform with the WCAA, 1989.

If an employee cannot work due to a work-related injury, the WCAA, 1989 requires an employer to continue to fund employer contributions to employee benefits—including pension plans—for a period not to exceed one year. In the case of a multi-employer pension plan (MEPP), the responsibility to fund these benefits is imposed on the pension fund rather than on the employer; plans must be amended to provide for these benefits no later than January, 1992. If a plan has not been amended by this date, the WCAA, 1989 provides that all MEPPs will be deemed to contain provisions which will provide for this extra benefit. However, appropriate amendments under the PBA, 1987 may still be required.

Many pension plans provide currently for the continued accrual of benefits during a member's disability. Administrators must review their plan provisions to ensure that they satisfy the requirements of the WCAA, 1989.

All pension plans registered with the PCO must provide for this benefit for Ontario employees; the benefit is provided by registering a plan amendment with the PCO.

The actuarial report to be filed, as required by the PBA, 1987 and Regulation, must provide for appropriate funding of the additional credits.

The specific provision in the WCAA, 1989 dealing with these requirements is section 5a:

5a.-(1) An employer, throughout the first year after an injury to a worker, shall make contributions for employment benefits in respect of the worker when the worker is absent from work because of the injury.

(2) For the purpose of determining a worker's entitlement to benefits under a benefit plan, fund or arrangement, a worker shall be deemed, for one year after the date the injury occurred, to continue to be employed by the worker's employer on the date of the injury.

(3) If the Board finds that an employer has not complied with its obligations under subsection (1), the Board may levy a penalty on the employer to a maximum of the amount of one year's contributions for employment benefits in respect of the worker.

(4) The employer is liable to a worker for any loss the worker suffers as a result of the employer's failure to make the contributions required by subsection (1).

(5) Contributions under subsection (1) are required only if,

(a) the employer was making contributions for employment benefits in respect of the worker when the injury occurred; and

(b) the worker continues to pay his or her contributions, if any, for the employment benefits while absent from work.

(6) If a worker is injured while engaged in employment described in subsection 1(2) or (4), the worker's employer, other than the employer described in subsection 1(2) or (4), shall be deemed to be the employer for the purposes of this section.

(7) If an employer makes contributions under subsection (1) in respect of a worker described in subsection (6), the employer described in subsection 1(2) or (4) shall reimburse the employer for the contributions.

(8) Subsection (1) does not apply to an employer who participated in a multi-employer benefit plan in respect of a worker if, throughout the first year after the worker is injured whenever the worker is absent from work because of the injury,

(a) the plan continues to provide the worker with the benefits to which the worker would otherwise be or become entitled under the plan; and

(b) the plan does not require contributions from the employer during the absence and does not require the worker

to draw on the worker's benefit credits, if any, under the plan during the absence.

(9) A multi-employer benefit plan shall contain and, if it does not do so, shall be deemed to contain provisions sufficient,

(a) to enable all employers who participate in the plan to be exempted under subsection (8) from the requirements to make contributions; and

(b) to provide each worker with the benefits described in subsection (8) in the circumstances described in that subsection.

(10) Subsection (9) shall come into force two years after the date on which this section comes into force.

Enquiries regarding the provisions of the WCAA, 1989 should be directed to John Slinger, Acting Director of the Reinstatement Branch, Worker's Compensation Board, 2 Bloor Street East, Toronto, Ontario M4W 3C3.

Retirement Financial Planning: An Awareness Program with a Multicultural Approach

The PCO has initiated a public education project, designed to build greater awareness of retirement financial planning and the benefits of employer-sponsored pension plans. It is also intended to encourage increased pension coverage. The objectives of this project are: to stimulate thinking and provide key information on financial planning for retirement; and to provide information on pensions and pension reform in Ontario.

While retirement financial planning is a vital concern for all Ontarians, research seems to indicate a distinct need for education in **Ontario's ethnocultural communities** and, in particular, among women in all communities. In order to address the cultural barriers to increased pension coverage, the approach of the PCO education project is multicultural.

This initiative is being carried out by an Interministerial Committee, comprised of representatives from the PCO, the Ministry of Financial Institutions, the Ministry of Citizenship, the Office of Senior Citizen's Affairs and the Women's Directorate. The Committee is chaired by Ken Doiron, Manager of Research & Communications, Pension Commission of Ontario.

Funding for the project is being provided by the Ministry of Citizenship's Multiculturalism Strategy Fund on the basis that the project promote multicultural policy objectives. A stipulation of the project is that it address barriers to information facing racial and cultural minorities owing to "official language ability, and lack of knowledge of government programs and services."

Communication materials will be produced by the PCO and translated into several targeted languages. The Committee has adopted a community consultation approach to ensure cultural sensitivity in the presentation of ideas and to assist in retirement financial planning.

There will be a special focus on the financial and retirement needs of women in ethnocultural communities. Despite increased participation in the labour force, older women are particularly vulnerable to poverty. The expansion of pension plan coverage offers more women the opportunity to plan for financial security in their retirement.

However, in order to benefit from this opportunity, women must first be made aware of the importance of retirement financial planning, especially early planning.

Within a voluntary pension framework, education is an important means to overcoming structural barriers to increased pension coverage. Awareness programs such as this project will enable the PCO to fulfil its mandate of promoting coverage of pension plans and thus support the government's overall objective of averting poverty among seniors in Ontario.

We will publish an update of this and other PCO initiatives in future issues of the PCO Bulletin.

Administrative Practices

Letters of Credit

THE ISSUE HAS ARISEN as to whether letters of credit are satisfactory as collateral in securities lending.

The use of letters of credit is not currently permitted as collateral in securities loans. Section 73(b) of the Regulation to the PBA, 1987 specifies that the investments of a pension fund may be lent provided that:

"the loans are secured by cash or readily marketable investments having a market value of at least 105 percent of the loan and maintained no less frequently than weekly to ensure a market value of the collateral of at least 105 per cent of the outstanding market value of loaned assets."

As justification for the use of letters of credit as collateral, the view has been expressed that an irrevocable letter of credit is money or money's worth put at risk forthwith. However, the use of letters of credit presents many difficulties; for instance:

- they are difficult to segregate;
- they are not divisible like blocks of securities;

- they expire; and
- they have varying revocation clauses.

As a result of these limitations, banks have not accepted letters of credit as collateral from brokers. Furthermore, for these and other reasons pertaining to capitalization rules, the Toronto Stock Exchange (the TSE) has not allowed members to use letters of credit as acceptable collateral.

The PCO has been asked to consider recommending to the Government that the Regulation be amended to permit the use of letters of credit in securities lending, provided that industry participants can agree on a set of uniform practices that embrace a number of conditions for letters of credit:

- 1) letters of credit will adhere to a standard format;
- 2) they will be issued by a Schedule "A" Canadian chartered bank;
- 3) they will be irrevocable; and
- 4) they will not contain any conditions that would delay or render uncertain the realization thereon by a pension plan.

A universal standard for letters of credit presents the advantage that the letter of credit format could be approved by the PCO on a one-time basis.

However, the PCO has serious concerns that the greater flexibility presumed to be given to securities loan transactions by the use of letters of credit may be outweighed by the number and nature of inherent technical problems. Administrators who propose to use letters of credit must possess levels of knowledge and competence compatible with the standard of prudence stipulated in the PBA, 1987.

The matter of securities lending gives rise to another caution - the issue of borrowing. Brokers and dealers lend each other securities in accordance with TSE rules. These deals are effectively cross-borrowings. Since the Regulation to the PBA, 1987 precludes pension funds from borrowing, **pension funds which lend securities according to TSE rules are in contravention of the Regulation.**

Comments concerning the above may be addressed to Jules Huot, Manager, Investment Policy Analysis.

A Discussion of the Issues Affecting "Class of Employees"

ONE OF THE GOALS of

pension reform is to expand coverage for employees—including those who work part-time. This is to be achieved within the framework of a voluntary private pension system and without artificial or arbitrary distinctions among plan members. The concept of "class of employees" is of great importance among pension professionals and often poses difficulties when attempting to define or describe it. Two concepts—"class" and "eligibility"—are closely intertwined, and it is important to clarify their meanings as much as possible.

This article is neither a definitive examination of a difficult concept nor a resolution of the many problems which flow from it. It briefly discusses the issue in the context of pension reform; summarizes current PCO practice in interpretation; reviews some common enquiries; and makes suggestions as to how your specific questions may be directed to the PCO staff.

The key provisions in the PBA, 1987 which apply to class are:

*32(1) Every employee of a **class of employees** for whom a pension plan is established is eligible to be a member of the pension plan.*

*(2) An employee in a **class of employees** for whom a pension plan is maintained is entitled to become a member of the pension plan upon application at any time after completing twenty-four months of continuous full-time employment.*

(3) A pension plan may require not more than twenty-four months of less than full-time continuous employment with the employer, with the lesser of,

(a) earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings; or

(b) 700 hours of employment with the employer,

in each of two consecutive calendar years immediately prior to membership in the pension plan, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the pension plan.



Pension
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of Ontario

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Ontario M7A 2K2

Form 3

Spousal Waiver of Joint and Survivor Pension

Pension Benefits Act, 1987 (Section 47 of the Act)

Name of member/former
member's spouse

I, _____,
am the spouse, within the meaning of the *Pension Benefits Act, 1987*, of

Name of member/former
member

_____ who is entitled to a pension benefit under the

Name of pension plan

_____.

I am aware that, in the absence of a waiver, a pension payable to a former member who has a spouse on the date that the payment of the first installment of the pension is due must be paid as a joint and survivor pension as required by section 45 of the *Pension Benefits Act, 1987*.

I understand that I may waive any right to a survivor pension of at least 60 per cent of my spouse's pension benefit should my spouse predecease me. By waiving my right, my spouse will be able to elect an alternative form of pension which will provide me with no survivor pension or a pension which is less than the 60 per cent minimum.

I hereby waive my right to a joint and survivor pension as required by section 45 of the Act. The signature of my spouse, below, serves as an acknowledgement that he or she agrees to such a waiver.

I understand that we may revoke this waiver at any time prior to the date of the commencement of payment of my spouse's pension.

City or town, Province

Dated at _____, in the Province of _____

Day, Month, Year

this _____ day of _____, _____.

Signature of spouse

Witness to signature of spouse

Signature of member or former
member

Witness to signature of
member or former member

Prior to completing this Form, each party should consider obtaining independent legal advice concerning their individual rights and the effect of this waiver.

Note: This waiver is not effective unless it is delivered to the Administrator or the insurance company, where appropriate, within the twelve month period immediately preceding the commencement of payment of the pension benefit as required by subsection 47(2) of the Pension Benefits Act, 1987.



Commission
des régimes
de retraite
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Formule 3

Reconciliation du conjoint à une prestation de pension réversible

Loi de 1987 sur les régimes de retraite (Article 47 de la Loi)

Nom du conjoint du participant
ou de l'ancien participant

Je, _____,

suis le conjoint, au sens de la *Loi de 1987 sur les régimes de retraite*, de

Nom du participant ou de
l'ancien participant

qui a droit à une prestation de retraite en vertu

Nom du régime

d _____.

Je suis conscient(e) du fait qu'en l'absence d'une renonciation, la pension payable à un ancien participant qui a un conjoint à la date où le premier versement est exigible doit être versée sous forme de pension réversible, conformément à l'article 45 de la *Loi de 1987 sur les régimes de retraite*.

Il est entendu que je peux renoncer à tous mes droits à une pension réversible équivalente à au moins 60 % de la prestation de retraite de mon conjoint et payable si ce dernier meurt avant moi. Si je renonce à mes droits, mon conjoint pourra choisir un autre type de pension qui ne me donnera droit à aucune pension réversible ou alors me fournira une pension d'un montant inférieur au pourcentage minimal de 60 % prévu.

Je renonce par les présentes à mes droits à la pension réversible prévue par l'article 45 de la Loi. La signature de mon conjoint ci-dessous atteste que ce dernier consent à la renonciation.

Il est entendu que nous pouvons annuler la présente renonciation à n'importe quel moment avant la date de commencement du paiement de la prestation de retraite de mon conjoint.

Ville, province

Fait à _____, dans la province de _____

Jour, mois, année

le _____ jour de _____, _____.

Signature de conjoint

Témoin de la signature du
conjoint

Signature du participant ou de
l'ancien participant

Témoin de la signature du
participant ou de l'ancien
participant

Avant de remplir la présente formule, les deux parties ont intérêt à se renseigner auprès d'un avocat sur leurs droits respectifs et la portée de la présente renonciation.

Note: La présente renonciation n'est valide que si elle est remise à l'administrateur ou à la compagnie d'assurance, le cas échéant, dans la période de douze mois qui précède immédiatement le commencement du paiement de la prestation de retraite, conformément au paragraphe 47(2) de la Loi de 1987 sur les régimes de retraite.



Pension
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Form 4

Spousal Waiver of Pre-Retirement Death Benefit

Pension Benefits Act, 1987 (Section 49 of the Act)

Name of member or former
member _____

hereinafter the "member" or "former member," and

Name of spouse _____

hereinafter the "spouse," hereby certify that we are spouses within the meaning of the *Pension Benefits Act, 1987*.

We understand that, in the absence of a waiver, if the member or former member dies,

(a) prior to the payment of a deferred pension; or

(b) where the member continues in his or her employment after the normal retirement date,
prior to the commencement of payment of pension benefits,

then the person who is the spouse of the member or former member at the date of his or her death is entitled to receive a pre-retirement death benefit of either a lump sum payment or an immediate or deferred life annuity from

Name of pension plan _____

at the date of the member or former member's death.

We understand that we may waive the right of the spouse to receive any pre-retirement death benefit, in which case payment of this benefit will be made to either,

(a) a beneficiary designated by the member or former member; or

(b) the personal representative of the member or former member for distribution as part of his or her estate.

Name of spouse _____

We hereby waive the right of _____

to receive any payment under section 49 of the *Pension Benefits Act, 1987*.

City or town, Province _____

Dated at _____, in the Province of _____

Day, Month, Year _____

this _____ day of _____, _____

Signature of spouse _____

Witness to signature of spouse _____

Signature of member or former
member _____

Witness to signature of
member or former member _____

Prior to completing this Form, each party should consider obtaining independent legal advice concerning their individual rights and the effect of this waiver.



Commission
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de retraite
de l'Ontario

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Toronto, Ontario
M7A 2K2

Formule 4

Reconciliation du conjoint à la prestation de décès avant la retraite

Loi de 1987 sur les régimes de retraite (Article 49 de la Loi)

Nom du participant ou de
l'ancien participant

ci-après appelé «le participant» ou «l'ancien participant», et

Nom du conjoint

ci-après appelé «le conjoint», certifions par les présentes que nous sommes conjoints au sens de la *Loi de 1987 sur les régimes de retraite*.

Il est entendu qu'en l'absence d'une renonciation et advenant le décès du participant ou de l'ancien participant:

(a) avant le commencement du paiement d'une pension différée; ou

(b) alors qu'il est toujours au travail après la date normale de retraite et avant le commencement du paiement des prestations de retrait,

la personne qui est son conjoint à la date du décès a droit à une prestation de décès avant la retraite sous forme soit d'un paiement d'une somme globale, soit d'une rente viagère immédiate ou différée, payable par

Nom du régime de retraite

et ce, à la date du décès du participant ou de l'ancien participant.

Il est entendu que nous pouvons renoncer au droit du conjoint de recevoir la prestation de décès avant la retraite, auquel cas la paiement de cette prestation sera effectué:

(a) soit à un bénéficiaire désigné par le participant ou l'ancien participant;

(b) soit au représentant successoral du participant ou de l'ancien participant pour distribution avec sa succession.

Nom du conjoint

Nous renonçons par les présentes au droit de
de toucher un paiement en vertu de l'article 49 de la *Loi de 1987 sur les régimes de retraite*.

Ville, province

Fait à _____, dans la province de _____

Jour, mois, année

le _____ jour de _____, _____

Signature de conjoint

Témoin de la signature du
conjoint

Signature du participant ou de
l'ancien participant

Témoin de la signature du
participant ou de l'ancien
participant

Avant de remplir la présente formule, les deux parties ont intérêt à se renseigner auprès d'un avocat sur leurs droits respectifs et la portée de la présente renonciation.

35 An employer may establish or maintain a separate pension plan for employees employed in less than full-time continuous employment if the separate pension plan provides pension benefits and other benefits reasonably equivalent to those provided under the pension plan maintained by the employer for employees of the same class employed in full-time continuous employment.

These provisions have given rise to a number of important questions that can be divided into two general categories: what are the eligibility rules for membership in a plan and, can a person or group of persons constitute a separate class? Many of the questions related to eligibility can be answered with relative ease:

1. Can the statutory requirements be waived to provide for more liberal requirements?

While statutory requirements cannot be waived, the PBA, 1987 sets out minimum standards; any plan may improve upon them and be more generous.

2. Can a part-time employee satisfy the YMPE test in year 1 and the hourly test in the second year?

Yes, whichever occurs first.

3. Can students who work part-time be treated differently than regular part-time employees?

No; once they satisfy the eligibility requirements, membership must be offered to them.

4. Are seasonal workers who are terminated each year and then re-hired next year eligible if they satisfy the part-time requirements in two consecutive years?

No; termination of employment requires the seasonal worker to start again each year. However, the terms of their employment should not be structured so as to contravene the spirit of the PBA, 1987.

5. Can a deadline be established by which date a member must join the plan when he becomes eligible?

No. In a voluntary pension plan, once the member has met all eligibility requirements he must be permitted to join the plan at any time.

PCO Interpretation Bulletin I

The above enquiries are straightforward; some enquiries are broader in scope, and call for further interpretation. In response, the PCO produced Interpretation Bulletin I in March, 1988. In making a determination as to what constitutes a class of employees, both the nature and the terms of

employment must be taken into account. Whether or not a separate class exists depends upon the specific employment facts. For example, any of the following groups would constitute a separate class: salaried employees, hourly employees, union members, non-union members, supervisors, management, executives, officers, and significant shareholders.

With respect to eligibility requirements, full-time employees are eligible once they satisfy the twenty-four month continuous service requirement; part-time employees must be permitted to join the plan when they complete twenty-four months of continuous employment, and in each of the two consecutive years immediately prior to membership, meet one of the two tests (35% of YMPE earned or 700 hours). For full or part-time employees, reasonable waiting intervals (i.e., one pay period) to join the plan will be permitted for administrative purposes, but part-time employees of MEPPs may be required to wait until January 1 of the year immediately following attainment of eligibility. When determining reasonably equivalent benefits for part-time employees, all benefits including ancillary benefits must be reasonably equivalent.

While Interpretation Bulletin I succeeded in clarifying some of the areas of concern regarding classes of employees, many uncertainties remained. Whenever a plan wants to treat certain individuals in a different manner, the possibility of a class issue may arise. Many of the issues are very plan specific and cannot be dealt with generally. Staff of the PCO have attempted to provide general guidelines, which are set out below.

A Sampling of Recent Enquiries Concerning Class of Employees

Criteria For Determining Classes

One of the most common questions is whether certain criteria are acceptable in determining a class of employees. The criterion "employees on different salary levels" is probably too vague, as "salary" is a loose concept; but, "employees hired after a certain date" could form a separate class. Depending on the context, members of a plan who are "employed at a separate location" can make up a separate class. In certain circumstances where some employees are in a different province, a separate class for them may be necessary because of different legal requirements.

Individuals As Separate Classes

In general, an individual cannot constitute a class; if special pension provisions are to be made for that person, it should be in the form of a separate plan. (However, care must be taken to adhere to Revenue Canada's requirements and limits for single-

member plans.) But a class can be made up of a few individuals if they constitute a readily identifiable group (such as vice-presidents of a corporation).

Different Requirements For Full and Part-Time Employees

While section 35 of the PBA, 1987 refers to reasonably equivalent *benefits*, there can be **different eligibility requirements** for full and part-time employees. For example, a plan could provide that full-time employees may become members of the plan as soon as they begin employment, but that part-time employees must satisfy the statutory requirement of twenty-four months of continuous employment before they become eligible. This should be distinguished from **vesting requirements**, which must be on a comparable basis in that the 2-year vesting "clock" (for post '86 benefits) commences as soon as an individual becomes a member. The vesting period may be shortened, but would have to be done so for both full and part-time employees.

Miscellaneous Enquiries

When an employee moves to a new position in the same company, the plan may require the employee to join a different class in the pension plan covering the new position even if the future benefits are inferior; however, any past benefits can not be reduced.

In determining the definition of earnings for the 35% of YMPE test, the total amount of the employee's taxable employment income must be taken into account, as the YMPE measure includes the aggregate of all amounts of income received. In determining the 700 hours test, the total number of hours worked must be taken into account, including overtime.

An employee who previously elected not to become a member of a plan and who then decides to become a member cannot constitute a separate class on that basis alone.

Conclusion

The PBA, 1987 is silent on many class-related issues. As a result, it may be necessary to direct questions to the PCO staff. However, it is frequently the case that in the absence of direction from the legislation, the **terms of the specific plan** will determine the answer; pension professionals are urged always to check this first. In interpreting questions concerning class, staff of the PCO make use of Interpretation Bulletin I and the "spirit" of the pension reform objectives of widening participation.

When making enquiries of PCO staff on class-related matters, it is very important to provide **all the relevant facts with full disclosure of the context**. For example, a simple question as to

whether employees at a different plant location can constitute a separate class may not be sufficient; it is necessary to add, for instance, that this group consists of only 2 employees or, that they are significant shareholders or, that one is part-time or, that the employees are part of a larger sub-group. An over-simplified question may elicit a simple answer but it may be of little use when the amendment is rejected because of the factual context.

PCO staff recognize the complexity of class and eligibility problems, and wish to assist in resolving them as expeditiously as possible. Please direct your enquiries to Jerry Williams, Research Analyst, Secretariat.

Central Registry for Pooled Fund Documents

ABOUT A YEAR AGO the PCO created a central registry for pooled funds to streamline the preparation of the SIP & G by smaller pension funds investing primarily in pooled, mutual or segregated funds. To participate in the central registry, a pooled fund vendor deposits the pooled fund document with the PCO to be placed in the central registry, and is assigned a central registry number. Administrators of pension plans investing in these pooled funds may make reference to these documents in their SIP & G, and thereby avoid repeating or describing the contents of the document.

To date, 50 pooled fund vendors have filed documents covering 248 pooled funds, as follows:

Type and Number of Vendors		Number of Funds
Investment counsellors	20	84
Life insurance companies	20	108
Mutual fund companies	5	20
Trust companies	5	36

These numbers suggest that most of the major institutions among the life insurance and trust company groups are represented in the central registry. Mutual fund companies are under-represented. The investment counsellor group is made up of a cross-section of the industry in terms of size and location, but obviously represents a minority of industry participants.

The central registry provides pooled fund vendors with an opportunity to increase the quality and level of service to their clients; in this way they make it easier for Administrators to comply with some of the requirements of the PBA, 1987, and contribute to preservation and extension of the pension system.

The Administrator remains responsible for ensuring that the investments of the fund comply with the investment restrictions in the PBA, 1987 and the Regulation, and for filing a SIP & G that fully complies with the Regulation and guidelines. Many pooled fund documents may not address all items required in the SIP & G, as set out in the Regulation and described in Compliance Assistance Guideline No. 3. Pooled fund documents may not necessarily indicate that the investments of pooled funds will be in compliance with investment restrictions for pension funds in the Regulation.

Therefore, the more clearly the pooled fund document states that investments of the fund are made in compliance with the Regulation, and the more comprehensively it covers the requirements of the Regulation and the guidelines, the more convenient it is for the Administrator in preparing the SIP & G. If a pooled fund document is incomplete or inadequate in terms of the requirements for a SIP & G, a mere reference to that document by an Administrator will render the SIP & G short of compliance with the Regulation and guidelines.

Even if the pooled fund document appears to be in compliance with the Regulation as to investment restrictions and guidelines for the Statement, the Administrator must separately address the following:

- 1) the type of pension plan;
- 2) the nature of pension plan liabilities if defined benefit;
- 3) a reference to the pooled fund or funds selected or to be selected;
- 4) a description of asset allocation if more than one fund is selected; and
- 5) the conflict-of-interest policy respecting the selection of pooled funds.

A discussion of these points can be found in the Compliance Assistance Guideline No. 3.

Pooled fund documents may be deposited with the PCO by forwarding them to the Central Registry.

Derivative Instruments— Investing With Options and Futures

QUESTIONS HAVE arisen from Administrators and investment managers, concerning the use of derivative instruments and whether they satisfy the compliance requirements of the PBA, 1987 and Regulation. These derivative instruments take the form of futures and options contracts.

Under the old legislation, the Pension Benefits Act, 1980, the PCO imposed certain restrictions on Administrators in the use of futures and options; this was to ensure compliance with section 17 of the Regulation that dealt with allowable investments.

For instance, a fund could not write a call option for which it did not hold the underlying security (i.e. a naked call), nor could it sell a future unless it was directly related to the fund's underlying investments. Purchasing a put option for which no underlying security was held could only be achieved through the "basket clause" limitations of the Regulation, since the investment would not have satisfied the "legal list" standard of the Canadian and British Insurance Companies Act.

This standard for the investment of pension fund assets has been discarded under the new legislation. The key points to note under the new legislation are :

- the old rules and restrictions are replaced by the requirements of the PBA, 1987 and Regulation;
- the prudent person provisions of the PBA, 1987, set the standard by which an Administrator or investment manager must reach decisions involving the use of derivatives and derivative strategies as set out under sections 23 and 63 of the PBA, 1987;
- for purposes of complying with the prudence standard, the effect of using derivatives is judged in terms of the overall context of the investment portfolio. Subsection 63(2) of the Regulation dealing with the preparation of the SIP&G refers to the concept of this portfolio context;
- disclosure of the intended use of derivatives must be made in the SIP&G filed with the PCO, including the types of derivative instruments and the categories of securities on which they are based, pursuant to clause 63(3)(e) of the Regulation; and
- disclosure of derivative investments is required in the financial statements that are to be filed annually with the PCO in accordance with section 72 of the Regulation. Assets, liabilities and income resulting from transactions involving derivatives are to be disclosed in the Statement of Net Assets and the Statement of Changes in Net Assets. Additional disclosure at the individual investment level may be required in accordance with subsection 72(13)(b) of the Regulation.

Mandatory disclosure is required under 72(13)(c) of the exposure of the fund to derivative investments, and it is recommended that disclosure be made of all outstanding futures and options at the statement date to satisfy this requirement.

It is advisable that the SIP&G disclose the

strategies involving derivatives which the Administrator or investment manager will or can engage in, including the purpose behind such strategies. The staff will not prejudice, however, whether a particular strategy is prudent or not, or whether a plan is imprudent in not adopting the use of derivatives or derivative strategies. These are decisions for the Administrator to make in the light of the nature of plan liabilities, investment objectives of the fund, the prudence requirement of the PBA, 1987 and other factors that may be considered appropriate in the development of investment policy.

Commission staff currently are investigating the need for revising the disclosure requirements of the PBA, 1987 and Regulation with respect to derivatives, in both the SIP&G and the financial statements. The staff recognizes that certain issues regarding appropriate reporting and documentation with respect to the use of derivatives are now being addressed by the investment industry, the results of which may have a bearing on the staff's recommended changes in disclosure.

Some PCO staff are participating in a project formed from within the investment industry to deal with these issues. The project includes among others, representatives from trust companies, brokerage firms, pension fund managers and consultants; this affords an opportunity for discussion between PCO staff and investment industry professionals on the new developments in this field.

Questions or comments regarding the above are invited and may be addressed to either Larry Falconer, Plan & Investment Auditor or Jules Huot, Manager, Investment Policy Analysis.

Identifying Barriers to Pension Coverage

IN MARCH 1989, the PCO in conjunction with the Minister's Consultation Draft Project, invited proposals for a market research study to identify, analyze and assess the significance of the barriers to increased employment pension coverage in Ontario.

An interministerial Steering Committee, chaired by Priscilla Healy, Director of the Secretariat, appointed the research firm of Abt Associates of Canada. A report entitled *Employment Pension Coverage in Ontario* (November 1989) which identifies gaps in pension coverage and examines the extent to which these gaps result from structural barriers to increased pension coverage was prepared. Research for this Report was conducted in two stages. Data from a variety of sources including Statistics Canada were reviewed in an attempt to identify barriers to pension coverage and the gaps

resulting from those barriers. The second step included interviews with employees and plan sponsors to assess barriers to coverage in detail. Financial associations were also surveyed to determine their views on pension coverage and the potential market opportunities for new pension products.

The rate of pension coverage in Ontario gradually increased throughout the 1970's, peaking at the rate of 49.9% in 1979. Since that time, there has been a steady decrease in pension coverage which has occurred despite an increase in the number of actual pension plans. The number of paid workers in Ontario has grown more rapidly than pension coverage thereby depressing the pension coverage ratio. The demographics of recent labour force growth indicate that this growth has been concentrated among women, part-time workers and other employees with traditionally low pension coverage rates.

Coverage, for the purposes of this analysis, refers to the fraction of workers participating in an employer-sponsored pension plan, with the number of employed paid workers in Ontario as the base. Ownership of RRSPs is not reflected in this definition of coverage. Presently, employer-sponsored pension plans cover approximately 44% of the paid workforce in Ontario.

Pension coverage in Ontario's labour force varies substantially by industry and sex; for males, total pension plan membership is localized in manufacturing, and for females, membership is concentrated in the service sector and in public administration. Overall, the coverage ratio for males is 46.2% while, in contrast, the ratio is only 32.8% for females. Excluding part-time workers and the self-employed, the coverage rate increases to 75.1% for males and 63.3% for females.

Gaps in Pension Coverage

Analysis of gaps in pension coverage supports the PCO's concerns about the nature and extent of employer-sponsored pension plans in Ontario. The PCO intends to use the results of this study as a basis for new initiatives designed to promote the expansion of pension plan coverage.

The major factors associated with pension coverage are:

- **Age**
Workers under 30 are much less likely to participate in an employer pension plan.
- **Job stability**
Workers with a high rate of turnover or seasonal workers rarely participate in a pension plan.
- **Collective agreement coverage**
Workers not covered by collective agreements are less likely to belong to a pension

plan. Currently, only 23% of non-unionized workers are plan members.

■ **Earnings**

Workers with incomes below \$20,000 are much less likely to be covered by a pension plan.

■ **Full-time employment**

Full-time workers are more likely than part-time workers to be members of a pension plan.

■ **Education**

Individuals with lower levels of education have a lower pension coverage rate.

■ **Firm size**

Few small firms (less than 100 employees) provide an employer sponsored pension plan.

■ **Business ownership**

Business owners rarely rely on a pension for retirement income; rather they rely on sale of their business equity.

■ **Official language ability**

Individuals for whom neither English nor French is a first language are less likely to have retirement coverage.

■ **Sector of the economy**

The public sector, manufacturing industries, transportation, communications and utility industries are more likely to provide pensions. The primary industries, trades and services are least likely to provide pensions.

Barriers to increased pension coverage

These gaps in pension coverage represent the major demographic barriers to retirement coverage. There are also four 'structural' barriers to increased coverage:

a) **Costs of pension plan**

The single and overriding reason for absence of pension plan coverage for one-half of the Ontario work force is the cost to employers of making such provisions. Employers incur four types of costs associated with pension plans: contributions, administration, registration fees and staff time. Generally, employers resist long-term financial obligations which increase labour costs.

b) **Complexity of regulatory environment**

For some employers, fear of indexation inhibits the establishment of new defined benefit plans and may stimulate plan wind ups. The administrative burden associated with highly regulated pension plans is a deterrent to the establishment of new plans.

c) **Lack of knowledge and understanding**

Many pre-retirement employees, particularly those currently lacking pension coverage, lack the knowledge and information necessary for retirement financial planning. However, despite the apparent success of retirement financial planning advisors, only those who currently enjoy a higher income are likely to seek such advice. Those individuals who do seek retirement financial planning assistance generally do so at the end of their working life in conjunction with the purchase of retirement income products.

d) **Lack of concern for retirement coverage**

Few people seem concerned about having enough money for retirement. Individuals in the lower income levels consider retirement savings a low priority and thus do not voluntarily fund their own retirement. Middle and higher income earners appear to be more concerned about saving for retirement, however most of their retirement investments consist of an RRSP which is purchased primarily as a tax credit. Individuals with neither an RRSP nor a pension tend to rely on the sale of their primary residence or small business as a key source of retirement savings. In addition, low income earners often view life insurance as a source of retirement funds.

One-quarter of households in Ontario are lacking any form of retirement coverage. The profile of these individuals reflects existing gaps in pension coverage: low household income and net worth; business ownership and self-employment; employment in a small firm which does not provide a pension; no official language ability; and youth.

While participation in employer-sponsored pension plans has been decreasing, RRSP contributions have increased by 45%. This increase is distributed throughout the income range, including the very lowest brackets. Approximately 700,000 Ontario taxpayers use only an RRSP as a sheltered retirement vehicle. However, despite many advantages, RRSPs often fail to provide adequate retirement income, particularly if savings plans are collapsed for purposes other than retirement. Individuals who rely on RRSPs as their primary source of retirement income sometimes experience difficulty in saving and, shifting financial priorities often deter proper retirement savings/investment.

Views on retirement coverage

There is general agreement among financial institutions that small business will be the primary source of future growth in retirement coverage, largely through Defined Contribution Plans and Group Registered Retirement Savings Plans. In addition, there is widespread speculation that many

small and medium-sized businesses will convert existing Defined Benefit Plans to Defined Contribution Plans or group RRSPs. However, it is predicted that more RRSPs will be purchased by middle and high income earners as they increase in age.

Members of financial associations offer the following opinions on the future of retirement coverage in Ontario:

"Government, corporate and personal interests all share responsibility for retirement income. Government should act as a "safetynet" of retirement income and should create an environment that will encourage expansion of pension coverage. Corporate responsibility is voluntary in nature and should not interfere with the financial welfare of the business. Ultimately, it is the individual who is responsible for retirement income. Those who fail to adequately prepare for retirement must rely on the safetynet of public pensions and income support.

"In the current regulatory environment, expansion of pension coverage on a voluntary basis will be very difficult. Without clear financial benefits, few employers will establish new pension plans. Tax incentives are the best motivators of retirement coverage for both employers and employees. Only products that are simple to explain and administer will encourage additional coverage.

"Efforts to increase pension plan coverage must rely on education and advertising programmes designed to build knowledge and awareness of retirement financial planning issues. These initiatives must be designed to overcome resistance, created mainly by financial priorities, towards retirement financial planning."

Implications of existing pension coverage

Based on the preceding analysis of pension coverage in Ontario, we can draw the following conclusions:

The most quantitatively important gaps in pension coverage are:

- younger workers
- workers with unstable attachment to employment
- workers in small firms
- workers not covered by a collective agreement
- workers with the lowest income levels

The rate of coverage associated with younger workers will increase with maturation and thus does not appear to be a severe problem.

The changes introduced by the PBA, 1987 will likely reduce the gaps in pension coverage with respect to part-time employees.

In the case of workers with frequent job turnover, pension coverage is unlikely to increase unless they are in an industry such as construction which offers multi-employer pension plans (MEPPs).

The gap in pension coverage associated with women is attributable to the nature of female employment, particularly employment in low wage, part-time occupations. As pension participation increases for these jobs, female participation will also increase.

Growth of pension coverage

Research suggests that there are two major areas which must be addressed by future PCO initiatives if pension plan coverage is to be expanded. First, a reduction in the complexity of pension regulation. This would reduce the administrative burden experienced by plan sponsors as well as the lack of understanding among plan members. In addition, it would promote compliance to the benefit of plan members.

Secondly, there must be education initiatives directed at both prospective plan sponsors and potential plan members. Employers must be made aware of the vital role which pension plans will play in the financial future of Ontario's aging population and they must be encouraged to establish and maintain a pension plan. In addition, current plan sponsors must be encouraged and assisted in complying with the legislation. Potential plan members must be educated about the importance of retirement financial planning and must be informed on pension plans and retirement financial planning generally.

To increase pension plan coverage within a voluntary framework, the PCO must overcome the four existing structural barriers: cost, complexity, lack of knowledge, and lack of concern. Attitudes and knowledge of retirement financial planning can be changed through public awareness initiatives and education programs, particularly if they are made available in a number of languages. Ability to save can be improved by encouraging for instance, a system of payroll deductions for pension plans. Employment-related barriers to coverage can be decreased by establishing new plans particularly in small businesses and through financial incentives.

Employers' reluctance towards adoption of pension plans must also be addressed. Through educational awareness campaigns, employers must be encouraged to establish new pension plans. This research study suggests that efforts should focus on small firms where there is the greatest

potential for new pension plans. To be truly effective, initiatives directed to these employers must be accompanied by financial incentives.

Commonly Asked Questions

Q. Does a new Investment Policy Return need to be filed annually to confirm “no changes” to a previously filed Statement of Investment Policies & Goals? Is an IPR needed when an amendment to the SIP&G is filed?

A. No, a new Investment Policy Return is not needed to confirm or amend the Statement of Investment Policies & Goals. A letter referencing the plan's name and provincial registration number, and stating “no changes” or attaching the amendment to the SIP&G is sufficient for this purpose.

Q. If an adverse amendment has been registered by the Superintendent, can it still be challenged by plan members?

A. Generally, only by legal action. An Administrator is entitled under the PBA, 1987 to register an adverse amendment (that is, an amendment which reduces future benefits or which otherwise adversely affects rights or obligations of members, former member or certain others). An Administrator proposing such an amendment to a pension plan is required to give notice of the proposed amendment to members, former members and any other person entitled to payment from the pension fund (and to a trade union, if applicable, under subsection 27(5) of the PBA, 1987). Provided that this notice is given, the Superintendent has the power to register whether the members agree or not. Plan members always have the right to challenge the amendment by way of appropriate legal action.

Q. What kind of administrative expenses can be paid out of the pension fund? Can an Administrator change the kind of expenses being paid?

A. The PBA, 1987 does not specifically prescribe the nature or type of an administrative expense. However, if the cost of administration of a pension plan and pension fund is to be paid from a pension fund, the pension plan documents must set out a mechanism for this. Each pension plan is unique and determination of reasonable fees and expenses is to be made by the Administrator.

Yes, an Administrator can change the kind of expenses being paid from the fund. To do so, an amendment to the plan would have to be

registered. Such a proposed amendment would have to be given to all necessary parties, pursuant to subsection 27(1) of the PBA, 1987, unless it can be established that no rights of a member, former member, or other person entitled to payment from the fund would be adversely affected.

Q. What constitutes a “significant number of members” when the Superintendent is considering the ordering of a wind up for purposes of clause 70(a)(d) of the PBA, 1987?

A. Each situation will be reviewed based on the specifics of the case. The question of what is a “significant” number will take into consideration a total plan basis and, if appropriate, a specific geographic location or membership class. As a general rule, a 20% drop in membership indicated by a source or documentation such as an AIR, will trigger further examination of the case by PCO staff.

Note: the above questions and answers are general only, and the wording of the plan or contract may be relevant in a particular case.

Appointment of Administrators

PURSUANT TO section 72 of the PBA, 1987, the Superintendent of Pensions has appointed Administrators to wind up the pension plan(s) of the following companies. These Administrators were appointed owing to the insolvency of the companies.

The Superintendent will appoint outside Administrators from an established roster where the matters are complex or there are a large number of pension plan members involved.

Company*	Administrator Date of Appointment
Canada Decal Inc. (1)	Ernst & Young Inc. 22/06/90
Leigh Instruments (3)	Price Waterhouse Ltd. 03/05/90

* the number in brackets indicates the number of pension plans involved.

Proceedings Before the Commission

Requests for Hearings/Applications

a) CUPE/OPSEU/Service Employees International Union/OHA

On October 11, 1990, the PCO will hear an application brought by the Canadian Union of Public Employees, the Ontario Public Service Employees Union and the Service Employees International Union (the "Unions"). The respondent is the Ontario Hospital Association (the "OHA"). Counsel on behalf of the Pension Commission of Ontario will also be making submissions.

The preliminary issue to be decided by the Commission is whether the Commission has the jurisdiction to require a hearing resulting from the Superintendent's refusal to make an order pursuant to section 88 of the PBA, 1987 to compel the OHA to comply with clause 8(1)(e).

b) General Motors of Canada Limited—Canadian Hourly-rate Employees Pension Plan

The Commission hearing on the matter of standing originally scheduled for June 27, 1990 is being rescheduled.

The Commission's decisions in these matters will be reported in a future issue of the PCO Bulletin.

Decisions

Commission Decisions - Applications Approved Since April, 1990

Applications Approved Under Clause 7a(2)(b) of the Regulation and subsection 79(1) of the PBA, 1987 - Surplus Withdrawal on Wind Up

At the Commission meeting held May 17, 1990, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

a) Allied Conveyors Limited (C-15844)

Refund of plan surplus in the amount of \$129,344, with interest to the date of distribution, to the employer on wind up.

At the Commission meeting held July 19, 1990, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

a) CCL Industries Inc. (C-17744)

Refund of plan surplus in the amount of \$4,353.99 as at February 27, 1987 to the employer.

Applications Approved under Clause 7a(2)(b) of the Regulation and under Subsections 79(1) and 64(7) of the PBA, 1987 - Surplus Withdrawal on Wind Up and Request for Return of Member Contributions

At the Commission meeting held June 21, 1990, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus and pursuant to subsection 64(7) of the PBA, 1987 to the refund of member-required contributions.

a) Purolator Products Ltd. (C-3115)

Refund of plan surplus in the amount of \$794,473 to the employer and refund of member-required contributions in the amount of \$237,363.11.

Applications Approved under Subsection 64(7) of the PBA, 1987 - Requests for Return of Member Contributions

At the Commission meeting held May 17, 1990, the Commission consented pursuant to subsection 64(7) of the PBA, 1987 to the refund of member-required contributions.

a) Larsen & Shaw Limited Hourly Paid Employees' Pension Plan (C-19429)

Refund of member-required contributions in the amount of \$334,135.

b) Larsen & Shaw Limited Salaried Employees' Pension Plan (C-15439)

Refund of member-required contributions in the amount of \$253,964.

At the Commission meeting held June 21, 1990, the Commission consented pursuant to subsection 64(7) of the PBA, 1987 to the refund of member-required contributions.

a) Goodman & Goodman (C-15666)

Refund of member-required contributions in the amount of \$523,897.

Applications Approved Under Subsection 79(4) of the PBA, 1987 - Requests for Return of Employer Payments or Overpayments

At the Commission meeting held April 26, 1990, the Commission consented pursuant to subsection 79(4) of the PBA, 1987 to the refund of overpayments.

a) Thomas Abrasive Products Inc. (C-840)

Refund of overpayment of \$167,505 to the employer.

At the Commission meeting held May 19, 1990, the Commission consented pursuant to subsection 79(4) of the PBA, 1987 to the refund of overpayments.

a) Longyear Canada Retirement Plan B (C-9108)

Refund of overpayment of \$286,924.49 to the employer.

b) Peat Marwick Partners Pension Plan (C-103209)

Refund of overpayment of \$3,918,965 to the employer.

At the Commission meeting held June 21, 1990, the Commission consented pursuant to subsection 79(4) of the PBA, 1987 to the refund of overpayments.

a) Elgistan Management Limited Plan (C-40226)

Refund of overpayment of \$81,397.21 to the employer.

At the Commission meeting held July 19, 1990, the Commission consented pursuant to subsection 79(4) of the PBA, 1987 to the refund of overpayments.

a) W.H. Brady Inc. Profit Sharing Retirement Plan (C-11037)

Refund of overpayment of \$51,749.84 to the employer.

b) Delta International Machinery Pension Plan for Salaried Employees (C-17759)

Refund of overpayment of \$32,071.58 to the employer.

Applications Approved Under Section 7c of the Regulation and Subsections 79(1) and 64(7) of the PBA, 1987 - Request for Surplus Withdrawal From a Continuing Pension Plan and Request for Refund of Member Contributions

In a vote held July 31, 1990, the Commission gave its consent pursuant to section 7c of the Regulation and subsections 79(1) and 64(7) of the PBA, 1987 to the withdrawal of plan surplus and to the refund of member-required contributions.

a) Marshall Steel Limited Retirement Pension Plan (C-19919)

Refund of plan surplus in the amount of \$19,300,000 and refund of member-required contributions in the amount of \$7,858,000.

Applications Approved Under Section 106 of the PBA, 1987 - Request for Extension of Time for Filing Actuarial Report

At the Commission meeting held May 17, 1990, the Commission gave its consent to extend the time

limit for the Teachers' Pension Plan Board for filing their actuarial report to December 31, 1990.

Superintendent's Decisions

Notices of Proposal to Make an Order

The Superintendent issued a Notice of Proposal to Make an Order under subsection 90(5) [Notice of Proposed Wind-Up Order] of the PBA, 1987 dated April 4, 1990 for each of the following pension plans:

- a) Pension Plan for Key Executives of Atwell Fleming/Young Ltd.
- b) Pension Plan for the Employees of Atwell Fleming/Young Ltd.

The Superintendent issued a Notice of Proposal to Make an Order under subsection 90(5) [Notice of Proposed Wind-Up Order] of the PBA, 1987 dated June 19, 1990 for the following pension plan:

- a) Retirement Plan for Employees of Cygnus Industries Inc. and its Divisions.

The Superintendent issued a Notice of Proposal to Make an Order under subsection 90(2) [Notice of Proposal to Make Order] of the PBA, 1987 dated June 26, 1990 for the following pension plan:

- a) Revised Pension Plan for Employees of 747969 Ontario Limited O/A Amlin Cartage Limited.

Orders

The Superintendent issued an Order under section 70 [Winding-Up Order by Superintendent] of the PBA, 1987 dated April 26, 1990 for each of the following pension plans:

- a) Pension Plan for SunarHauserman and United Steelworkers of America, Local 3292.
- b) Pension Plan for SunarHauserman and United Steelworkers of America, Local 7657.
- c) Non-Bargaining Salaried Employees of SunarHauserman Retirement Income Plan.

The Superintendent issued an Order under section 70 [Winding-Up Order by Superintendent] of the PBA, 1987 dated June 6, 1990 for each of the following pension plans:

- a) Pension Plan for the Employees of Atwell Fleming/Young Ltd.
- b) Pension Plan for Key Executives of Atwell Fleming/Young Ltd.
- c) International Malleable Iron Company Limited Negotiated Pension Plan.
- d) Pension Plan for Salaried Employees of International Malleable Iron Company Limited.

Contacts for PCO Enquiries

Actuarial	Teck Go	972-5799
Annual Information Returns	Rose Ann Drakes	972-5782
Financial Statements	Larry Falconer	972-5809
Freedom of Information Requests	Ken Doiron	972-5798
General Enquiry - Secretariat	Lynn Barron	972-5825
Policy Issues	Jerry Williams	972-5826
Mailing List	Lynn Barron	972-5825
PCO Bulletin/Compliance Assistance Guidelines	Lynn Barron	972-5825
Pension Benefits Guarantee Fund (Administration)	Margaret Fennell	972-5785
Plan Registration - Forms		972-5784
Plan-specific Enquiry (state plan name and/or provincial registration no.)		963-0522
Registrar/Secretary to the Commission	Mary Crocker	972-5815
Statements of Investment Policies & Goals/Investment Policy Return	Jules Huot	972-5821

Note: Acronyms will be used throughout the PCO Bulletin and Compliance Assistance Guidelines to make the publications more readable.

AIR - Annual Information Return
CAPSA - Canadian Association of Pension Supervisory Authorities
CIA - Canadian Institute of Actuaries
CICA - Canadian Institute of Chartered Accountants
ISSG - Information Systems Services Group
FOIPOP - Freedom of Information and Protection of Privacy
IPR - Investment Policy Return
MFI - Ministry of Financial Institutions
OSC - Ontario Securities Commission
PBA, 1987 - *Pension Benefits Act, 1987*
PCO - Pension Commission of Ontario
SIP&G - Statement of Investment Policies and Goals

Are You On Our Mailing List?

The PCO will **not** be sending future Bulletins and Compliance Assistance Guidelines to our mailing list of registered plans (you are on this list if the mailing label shows your plan's provincial registration number). **If you would like to be on our supplementary mailing list to continue to receive the PCO Bulletin and Compliance Assistance Guidelines please write, or fax at 972-5812, to Lynn Barron, or call directly at 972-5825.** If you are a pension plan Administrator, the information in this Bulletin is of value. We encourage you to let us know that you want to continue to receive the Bulletin.

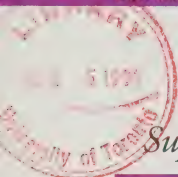
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THE PENSION COMMISSION OF ONTARIO BULLETIN

December, 1990

Vol. 1, Issue 4



A Message from the Superintendent of Pensions

Increasing and Maintaining Voluntary Compliance

IN MY LAST COLUMN, I discussed the legal implications of pension plan registration. Registration is required by the PBA, 1987, and is the first step of the plan compliance stream followed by annual reporting and triennial reports and cost certificates.

If reporting to the PCO is not done accurately it is the role of the Superintendent to apply enforcement powers, as set out in the PBA, 1987. However, the true effectiveness of our enforcement powers under the PBA, 1987 is not found in how many times they are applied but rather in our ability to administer the legislation without having to apply enforcement measures. Our main objective in administration is to increase and maintain voluntary compliance; we always remember that the private pension system is voluntary.

Along with encouraging sponsors to see the value in establishing pension plans, and along with educating employees on the importance of retirement security, we would ultimately like to show both the employer and the employee that compliance is actually fairly straightforward: compliance is not overly burdensome when you know how to go about it. The key to the process is communication.

Much of our effort at the PCO at this time is aimed at clarifying and defining the roles of the pension players. The key role is that of the Administrator. The PBA, 1987 makes it quite clear that the designated Administrator of a private pension plan shall ensure that the plan and its fund are administered in accordance with the PBA, 1987 and that all documents filed with the PCO will accurately reflect compliance.



Ontario

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At the present time - due to constrained resources, and our movement into new technology - we are not able to review, read, vet and correct every piece of paper filed with the PCO. This leaves us with two options:

- 1) We can view documents on a selective basis, which is risky and could allow for considerable slippage, or
- 2) We can make clear where the onus lies for responsible pension plan administration. The whole thrust of our recently instituted communications program - the PCO Bulletin and the series of Compliance Assistance Guidelines - aims at clarifying and explaining the myriad facets of responsible plan administration and setting out the accountability of the Administrator in the process.

In light of the latter policy our approach is changing. That is evident in our application of enforcement powers. The enforcement process will generally begin in the compliance examination or in some instances in the audit phase. On-site findings may indicate the need for corrective action; and if such action is not taken expeditiously then the more formal enforcement measures may have to be applied.

In the business approach we propose to take, the role of field compliance examinations will become increasingly significant. We want to implement professional on-site plan examinations rather than conduct detailed documentation review. We propose to cover 75% of Ontario's private pension plan membership over the first three year period after the program commences.

This approach to compliance examination is bolstered by:

- Administrator accountability;
- increased emphasis on communication to facilitate compliance; and
- simplified filing with a single Annual Information Return (AIR) from the plan Administrator.

This new AIR will include certification from the Administrator and the actuary when relevant, that reporting is correct in matters of: membership, assets, liabilities and contributions.

We cannot do this without more advanced information technology. We have just instituted stage one of our three stage Technology Plan. Our first priority is to establish business service systems around a central plan database. Stage two will set in place office administration systems. Finally in stage three we will have total records management and client service systems through an integration of our management information systems.

I do not want to give the impression that all our efforts will be dedicated to serving plan Administrators. Pension plans exist for the members; the intention is that members will benefit with a measure of retirement security. Accordingly it is in the interest of members that they be aware of what is happening in plan administration. There is even the question of what role members might have in plan administration. If the member takes the position: "This is my money.", then it is a short step to wondering: "How is it being invested?" and "Is it being invested 'prudently'?"

The PBA, 1987 provides for advisory committees with plan members, however, we do not have many such committees at this time. But as pension plan members become more knowledgeable and concerned the advisory committee concept may find its time has come. Our concern for the role of members in plan administration runs parallel to our current initiatives vis-à-vis coverage. The number of pension plans has gone down as we all know, yet it is our explicit mandate at the PCO to establish, extend and improve the pension plan system.

You will soon see some evidence of our concern for the coverage issue; we are about to mount several communications programs for both employees and the general public.

To sum up: the continuum from enforcement to voluntary compliance is a changing one. Every plan is at some point on the continuum. We want plan Administrators to be at the voluntary compliance end. We feel that we can help Administrators achieve compliance through a judicious combination of communications, technology, and field compliance review — all of this capped with a client service focus.

Robert H. Hawkes
Superintendent of Pensions

Security Investments Permitted Under Regulation 75

THE FOLLOWING ARTICLE deals with several continuing issues facing those responsible for investing pension fund assets. Background was furnished by The Canadian Depository for Securities Limited (CDS).

A certain mystique still surrounds the clearance and settlement of securities transactions even though more pension funds are investing in securities on a global scale.

Can pension plans hold securities in CDS?

Questions are arising as to the security of such investments and whether they are allowed under Regulation 75 of the PBA, 1987.

Regulation 75 states that:

All investment and loans of a pension fund shall be held in the name of, or for the account of, the fund.

Before addressing the issue of the Regulation, it is worthwhile to define the clearing and settlement of securities. One of the best definitions comes from a U.S. Congress background paper:

...the processing aspect of trading on the world's stock, futures, and options exchanges, as well as the processing of trades which are done outside of any organized exchange. Generally speaking, 'clearing and settlement' is what happens after the trade — everything from double-checking and confirming the terms of the transactions to paying for and delivering the traded financial instrument.

'Clearing' is the process of confirming and matching (after the trade) the terms of the deal: how much is being bought and sold, at what price, on what date, from which seller, to which buyer. 'Settlement' is the fulfilment — by each party to the trade — of the

obligations of the trade. For example, in the equities markets, to the buyer, 'settlement' means payment; to the seller, 'settlement' means delivering the traded financial instrument (or transferring ownership) to the buyer."

Regulation 75 has put into question whether pension plan assets can be held in the "book entry" system of settlement. This system requires that securities be "deposited" with The Canadian Depository for Securities Limited (CDS). The depository then holds the records as to which participating brokerage firms, banks and trust companies own portions of each block of securities. The participants in turn hold records of how much they have purchased or hold and for which clients.

Therefore, under the book-based system, securities are held in the name or account of the brokerage house not the fund as required by the Regulation.

The PCO has however taken the position that funds can invest in securities through the book entry system. This system provides speed, ease and increased accuracy in executing transactions and CDS serves merely as the holder or nominee in the system.

It is the understanding of the PCO at the present time that under various protection of securities regulations that federally regulated insurance, trust and loan companies are not allowed to deposit their assets with CDS. However, this is under review.

Global trading and "book entry" in the 90s

With increased trading across national borders, Canada is moving towards the "book entry" system as a priority settlement method. For many classes of investors, such as pension funds, it is no longer possible to refer to their investments as domestic. This global investment activity has resulted in an effort by both the private and public sectors to reduce systemic risk in the markets in general.

Most actively traded and non-constrained equities are already eligible for deposit at CDS. Value on deposits exceeds \$260 billion. The greatest efficiency for the marketplace will come as all securities are made eligible and actually deposited.

Work must still be done on the regulatory front to permit "book entry" holding of securities by some institutions, but it is clear that book entry clearance and settlement is the most efficient market strategy, both domestically and internationally.

To do this requires standardization and the linkage of clearing houses and depositories of many countries. In the absence of such standardization, these linkages could take a long time to develop. However, it will take the standardization of the clearing process worldwide to assure investors in global markets of minimal risk.

The Group of Thirty (G-30), an international "think tank" of financial practitioners and advisors, has examined the instabilities in the global clearance of securities and published its recommendations in March 1989. When the Group's nine recommendations are met, the expense of global security transactions will also be greatly reduced. CDS currently meets seven of the nine recommendations and is in a position to meet the remainder by the G-30 deadline of 1992.

Equities settlement in Canada now is consistently five days after the trading date. However, the settlement period is not consistent on a global scale. The amount of time can vary from less than one day to more than a week.

Differences between "rolling" settlement and "periodic" settlement further complicate matters. Rolling settlement refers to regular trade settlement, a given number of days following a trade. Periodic settlement occurs in markets where all the trades made during a particular "accounting" period are collectively settled during a set settlement period. For example the United Kingdom settles transactions over a six day settlement period after a two week trading or "accounting period."

Even though there are specific factors in each market that determine the length of the settlement period, it is still possible to narrow the gaps if markets move towards a more uniform timetable for settlement of similar financial instruments.

To improve efficiency and reduce risk by contracting the settlement period to three days from five by 1992, it will be necessary to make more securities eligible for book entry settlement and provide equal access to the clearing systems for all direct market participants. The wider the participation, the easier it will be to achieve optimum efficiency and security.

Revision of the Annual Information Return

FOUR OUT OF EVERY 10

Annual Information Returns (AIRs) received by the PCO are inaccurately completed or filed. It is a considerable task for smaller plans to muster the resources and time necessary to accurately fill out an AIR. Therefore considering that many of the 9,200 plans registered with the PCO have under 50 members, the error rate is not surprising.

As a result, the Superintendent has directed a committee of senior staff, including communications, systems and operations professionals, to redesign the AIR. The goal is to design a clear, user-friendly form that will reduce the error rate, yet fulfil the required regulatory function. Administrators are responsible under the PBA, 1987 to file the AIR on an annual basis no later than six months after the year end of the plan. It is planned that the new form will go into effect in the first or second quarter of 1991.

The comprehensive form will include all necessary information for plan regulation and provide plan Administrators with a convenient mechanism for compliance.

By making compliance simpler and faster, the new AIR will also reduce the necessity of calculating a late filing charge. The charge has created administrative problems for both the PCO and Administrators. One portion of the calculation involves the number of days the form is late. It is difficult for a client to determine the exact date the PCO will receive the form, in order to calculate the correct payment. This results in accounting problems for the client and collection problems for the PCO.

The new AIR is considerably streamlined compared to the current form. Only basic essential information applicable to all plans is collected. Specific categories of supplemental information will be gathered by way of Schedules. Only affected plans will receive these allowing the PCO to send Administrators a more customized AIR.

The new form will be integrated with other PCO administrative processes and with the Information Technology system now being installed. The objective will be to improve turnaround time, data input, processing, storage and retrieval, allowing the PCO to improve service to clients.



In December the committee will be asking for comments from clients as well as the Legal and Actuarial Advisory Committees. A number of firms representing a cross section of the PCO's total customer base has been selected for the external test. Firms interested in participating in the test should contact Camille Curson, Communications Officer, Pension Commission of Ontario, at (416) 972-5800.

A series of articles will follow in the Bulletin on the results of the consultation. When the new AIR is released the PCO will also prepare and issue a replacement Compliance Assistance Guideline to assist Administrators in completion and filing.

Financial Statements - More Work to be Done

IN A RECENT REVIEW of a sample group of 50 first-year filings of financial statements, only two completely satisfied the regulatory requirements that deal with content and disclosure.

Financial statements for most pension funds or plans are required to be filed with the PCO at each fiscal year-end of the plan commencing on or after December 31, 1988. This must be done in accordance with section 72 of the Regulation. The exceptions are those plans fully-insured by or fully-invested in deposit administration general funds contracts of life insurance companies.

The statements were reviewed by the PCO's plan and investment auditor as part of a study addressing the filing of financial statements. The focus of the study is on processing and compliance.

The problem areas identified by the auditor included:

A. Of the 50 plans in the sample, all of which were required to file financial statements in the form of a statement of net assets and a statement of changes in net assets as prescribed under subsection 72(5) of the Regulation:

- 23 failed to include either a statement of net assets or a statement of changes in net assets, or both.
- Nine consisted of statements or reports that

could not be considered to be either a statement of net assets or a statement of changes in net assets.

- One consisted of corporate financial statements of the plan sponsor rather than statements pertaining to the pension plan.

Further study revealed that,

B. Of the 29 plans in the sample that were required to file audited financial statements as prescribed under subsection 72(2) of the Regulation:

- Nine filed unaudited statements.

C. Of the 40 plans in the sample which managed to file either one or both of a statement of net assets or a statement of changes in net assets :

- 37 showed no evidence of the plan Administrator's approval of their content. The Regulation requires a manual or facsimile signature of the Administrator signifying approval.

Reg. 72(17)

- 17 failed to disclose prior year comparative figures. Such information is considered meaningful and should be disclosed in accordance with generally accepted accounting principles.

Reg. 72(6)

- 12 had no disclosure of individual investment details. Disclosure of prescribed information is required where individual investments exceed 1% of the book value or market value of the pension fund.

Reg. 72(13)(b)

- 11 were not prepared on a full accrual basis. Typically, accrual items such as "contributions receivable" or "benefits payable" were absent from or did not appear to be addressed in many unaudited statements that were filed.

Reg. 72(5), 72(10)(c) and 72(10)(d).

- 11 failed to disclose both book or carrying values and market values of the investment categories in the statement of net assets or in the disclosure notes. Simply equating carrying value with market value as a general

approach to satisfy the disclosure requirement is not acceptable.

Reg. 72(10)(a) and 72(11).

D. 38 of the plans identified in the above category filed a statement of changes in net assets, and of these the following omissions were discovered with respect to this particular statement:

- 17 failed to include a reconciliation on a market value basis between total investments at the beginning and end of the fiscal year.

Reg. 72(14)

- 13 failed to disclose unrealized gains or losses.

Reg. 72(14)(a)

- 12 included no breakdown of contributions between employee and employer or failed to indicate either as being the source of contributions.

Reg. 72(14)(e) and 72(14)(f)

- 11 failed to disclose investment income by category of investment.

Reg. 72(14)(c)

No projection of the findings has been made to the overall population of filed financial statements; however, the review shows that many plan Administrators experienced considerable difficulty with section 72 of the Regulation. This occurred more often where the statements were not required to be audited.

The study revealed that audited financial statements had a 36% lower error rate. This does not even take into consideration those statements, virtually all unaudited, that were returned as being inadequate filings (see A. above).

PCO staff will be developing a Compliance Assistance Guideline for publication in early 1991 to help plan Administrators file financial statements. The Guideline will be of most value to those Administrators of smaller plans that don't require audited financial statements. However all those involved in preparing financial statements should find them useful.

The Development of Information Systems at the PCO

THE PCO HAS RECEIVED

approval to begin implementation of a three-year strategic plan that will improve responsiveness, effectiveness and general service through the use of computer technology. The result will be on-line retrieval systems, office information systems and on-line filing/tracking systems. Plan sponsors and plan Administrators will benefit from faster turnaround.

In August the first step was taken with the purchase of an IBM AS/400 minicomputer. Work has now begun on developing a central database and automating the PCO's five major business systems.

In September, the PCO's consulting team started work on the Central Plans Database. This will be the central repository for all information on pension plans. It will provide pension officers update, enquiry and reporting capabilities for all plans information. Initially only data that is required to support the first set of applications systems that are currently being designed will be loaded into the system.

These systems are:

- **Document Tracking** - will assist in the recording of all incoming correspondence and documents and tracking their resolution.
- **Submission Tracking** - will track plan and fund submissions, identify submissions coming due or overdue, prepare reminder letters and produce management reports.
- **Financial Statement Processing** - will assist in the tracking and administering of the annual financial statements that must be submitted by plan Administrators within 90 days of the fiscal year-end of the plan.
- **Annual Information Reporting** - will speed up the processing and accuracy of administering the Annual Information Returns and track late returns.
- **Pension Benefits Guarantee Fund (PBGF) Assessment System** - will process PBGF assessments, prepare assessment notices, process payments, track and report late submissions, and produce management reports.

The design and implementation of these systems are scheduled for completion in the third quarter of 1991. At that time, development of the next set of systems to be automated will begin. We will be updating our progress in future issues of the PCO Bulletin.

CAPSA: Working Towards Uniformity

TODAY'S PLAN MEMBERS

are more mobile than ever before — companies frequently transfer employees to different provinces; people are moving to different parts of Canada in search of new employment opportunities, for less expensive housing or to retire.

However, each jurisdiction across Canada has different pension legislation. This is important for the plan sponsor or Administrator who attempts to calculate how an employee's pension benefits are or will be affected by a move.

Working to address these concerns is a group called the Canadian Association of Pension Supervisory Authorities (CAPSA).

Established in 1974, CAPSA has provided regular opportunities for members across the country to discuss new directions and positions in legislation and policies and to seek comments and suggestions. Jurisdictions have reviewed the impact and possible solutions to problems created by the recent changes to the Income Tax Act and other new initiatives. The meetings also offer an opportunity for Superintendents and Chairpersons to share with senior officials problems that are unique to them as chief regulators.

CAPSA is composed of:

- senior government officials in charge of the administration of pension legislation in those jurisdictions which regulate private pension plans; and
- officials of three federal departments which are directly concerned with pensions - Finance Canada, Revenue Canada, and Statistics Canada Pensions.

At present, the following jurisdictions are represented at CAPSA: Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland, New Brunswick and Prince Edward Island (although Royal Assent for the pension legislation of the latter two provinces has not yet been given).

CAPSA has four objectives: to share knowledge and information among members; to simplify regulatory administration; to work toward uniformity in pension legislation; and to promote pension plan coverage.

One of CAPSA's most important concerns is the goal of uniformity. In 1968, the jurisdictions that regulate pensions entered into a Reciprocal Agreement. Its purpose was to ease the burden of compliance on national plan sponsors. As each jurisdiction has enacted pension laws, they have signed the Agreement. However, it is very basic and covers few of the inter-jurisdictional problems.

Attempts were made during the 1980s to revise the Agreement and address more pressing issues. The last two years have witnessed increased efforts in this direction. However each jurisdiction must respond to its own needs and political pressures and the result is a wide variation in standards. The will to come to some new agreement does remain strong and attempts are continuing.

CAPSA meetings are held twice a year and special subcommittees meet regularly to consider specific issues. CAPSA has proven to be an excellent instrument for working toward common goals. However, it is not designed as an legislative body. The positions taken are not binding on jurisdictions.

CAPSA is taking an increasingly important role in the promotion of pension plan coverage. Each jurisdiction has agreed that pension supervisors must take a proactive approach to expansion of coverage and members have exchanged ideas on how to accomplish this. At a recent meeting CAPSA members attempted to identify barriers to pension coverage in different areas of Canada. Both common and unique obstacles were identified and various approaches to the problem were discussed including: simplifying legislation, adjusting regulation, introducing new pension vehicles, and improving communication and public education.

Closely related to the uniformity issue is administrative simplicity. An increasing number of pension plans have members who are employed in different provinces. The laws of these jurisdictions must often be applied when determining pension entitlements and rights. To keep each jurisdiction informed of new laws CAPSA members are in constant communication with each other, so that they are able to administer the relevant requirements. This is especially true in determining members' entitlements to surplus assets or entitlements on plan wind-ups.

The PCO invites comments on the difficulties of administering multi-jurisdictional plans in order that such feedback might be addressed by a reciprocal agreement among the pension authorities. Comments should address the issue of accrual of rights by members—whether they should be addressed in an agreement or in the pension plan itself and the question of which Administrators' rules to apply.

Notices

One Person Pension Plans

COMPANIES ARE OFTEN

interested in additional methods to compensate senior executives or to assist them in sheltering income from tax. A variety of approaches has been tried in recent years. One uses pension plans and involves several jurisdictions from a regulatory point of view.

This particular approach is under recent scrutiny from Revenue Canada. It is commonly referred to as "buying back past service"; and is used by executives who have not been covered by a pension with their employer or previous employer. These executives allow their employer to divert a portion of salary into a pension plan.

The object is to make up the amount that could have been contributed over the years if a pension plan had existed. The employee's savings might be used to make up the total contribution amount necessary to buy back past service. Contributions take place at the employee's current salary level and include interest that would have accrued if contributions were taking place over a period of years.

Revenue Canada's position appears to be that the employee is contributing more than the amount allowed for tax sheltered retirement savings for that year because the plan has been funded solely by employee contributions.

If Revenue Canada does not allow a particular plan to receive tax sheltered status on the above basis, the Superintendent takes the position that the plan does not qualify for registration, as defined in the PBA, 1987:

The PCO Bulletin 1990 Readership Survey

The PCO Bulletin is published to clarify and explain the legislative administrative rules and policies as defined by the PBA, 1987, in order to facilitate compliance, ease administration and improve communications between government regulators and the pension community.

In order to better serve our audience, we require your feedback on the content, presentation and usefulness of the Bulletin.

Please take a few minutes to complete the survey inserted in this issue of the Bulletin and mail it, postage paid, to the PCO.

Thank you in advance for contributing your ideas and suggestions. Your input will help us better meet your needs in upcoming issues.

"pension plan" means a plan organized and administered to provide pensions for employees, but does not include, ...

(c) a plan under which all pension benefits are provided by contributions made by members, ...

Some one person plans contain a proviso that they will become effective only upon acceptance by regulatory authorities including Revenue Canada. Even if a plan does not have this proviso, if it has already been registered, the Superintendent will allow an application to cancel the registration, on the basis it was improperly granted.

If the application for registration of a pension plan has been filed but not yet approved by the PCO it may be withdrawn. In this case the Superintendent will regard the plan as never having been in effect under the PBA, 1987 provided:

1. The plan documents set out acceptability for registration with Revenue Canada as a condition for establishment of the plan. Proof of Revenue Canada's rejection must be provided; or
2. The plan's beneficiary agrees in writing to the cancellation and proof of Revenue Canada's rejection is provided.

The PCO Bulletin 1990 Readership Survey

How frequently do you refer to your PCO Bulletin?:

- ☐ Daily ☐ Weekly ☐ Monthly
☐ Quarterly ☐ Other _____

What sections do you read and find useful? Please rate on the chart below:

1: needs expansion, 2: useful as is, 3: seldom used,
4: alternate source used _____

- | | |
|--|---|
| <input type="checkbox"/> General articles | <input type="checkbox"/> Administrative Practices |
| <input type="checkbox"/> Notices | <input type="checkbox"/> Commonly Asked Questions |
| <input type="checkbox"/> Proceedings | <input type="checkbox"/> Decisions |
| <input type="checkbox"/> Appointment of Administrators | |

What changes would you make to improve the PCO Bulletin?:

- ☐ None ☐ I would make the following changes:

Are you the plan ☐ Administrator ☐ Sponsor

☐ Other _____ ?

Should someone else who is associated with your pension plan, be receiving the Bulletin?

- ☐ No ☐ Yes, his/her name and address are:

Are back issues needed? ☐ Yes ☐ No

Do you want to continue receiving the PCO Bulletin?

- ☐ Yes ☐ No / Please give us the following information:

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Pension Commission of Ontario
101 Bloor Street West
9th Floor
Toronto, Ontario
M7A 2K2

If a Certificate of Registration was issued for a plan meeting these conditions, it must also be returned for cancellation.

To withdraw or cancel the registration of a plan, a letter should be submitted to the PCO, along with the Revenue Canada rejection notice. Fees paid to the PCO for registration of the plan will not be refundable in such a circumstance.

Plant Closings and Layoffs

There have been a number of plant closings and layoffs in the past few months. Details about such events generally come to the attention of the PCO through the Ministry of Labour.

This is helpful to staff when dealing with calls from the affected company's employees, union organizers and officials.

PCO staff check such information against plan files to determine whether a pension plan is involved and if claims may arise against the Pension Benefits Guarantee Fund.

Similar questions often arise when the sale of a business is announced. Some employers and their consultants meet with PCO officials prior to any public announcement. Our discussions are completely confidential in such cases. No additional information is passed on by us to callers until a public announcement has been made by the plan sponsor.

In the course of arranging a client's affairs you may become aware that a pension plan will be affected either by the sale of a business or by a plant downsizing or closing. If this occurs, it would be helpful to PCO staff to be informed. This will allow the PCO to answer questions in an informed fashion immediately after the news is made public.

Preliminary calls can be made to Mr. Nurez Jiwani, Director of Pension Plans, or to the appropriate pension officer. The PCO receptionist can assist in determining the appropriate pension officer in all cases.

Quebec Supplemental Pension Plans Act — Ontario Plans with Quebec Members

The *Quebec Supplemental Pension Plans Act* has made important administrative changes with respect to pension plans. The new legislation came into force on January 1, 1990, and the Regulation was enacted effective August 30, 1990.

The changes include the requirement for

mandatory pension committees and for increased information to plan members regarding plan documents, amendments, and entitlements. In addition, the legislation expands the rights of members regarding: pension splitting on marital breakdown; improved portability; vesting and locking-in; and expansion of coverage for part-time employees. Also included are: minimum interest rates on contributions; minimum employer contributions; survivor benefits on pre-retirement death; and early retirement provisions.

If the Quebec legislation applies to any plans registered with the PCO, those provisions must be amended to reflect the Act's requirements by December 31, 1990. A plan that is registered in Ontario and has some members in Quebec would be one such example.

Legal Advisory Committee - Update

Further to our article in the September, 1990 Bulletin, it should be noted that Mark Zigler of Koskie and Minsky is also on the Committee.

Administrative Practices

Gradual and Uniform Accrual in a Multi-Employer Pension Plan (MEPP)

SECTION 11(1) of the PBA, 1987 requires that a pension plan, "provide for the accrual of pension benefits in a gradual and uniform manner." The question of what is gradual and uniform accrual in the context of a multi-employer pension plan has seen various interpretations over the years, some of which are no longer acceptable to the PCO.

One difficulty that can arise centres around a plan that is structured so that the proportion of a member's annual benefit that is earned is determined by a band of hours worked during the year. For example, a MEPP might be structured with contributions being made to the fund for every hour worked.

Hours Worked by Member Per Year	Entitlement to Benefits Credited
Less than 600 hours	No benefit credited
600 but less than 1,000	1/4 annual benefit credited
1,000 but less than 1,400	1/2 " " "
1,400 but less than 1,800	3/4 " " "
1,800 and over	Full benefit credited

If the negotiated contribution was \$1 for every hour worked, a member who worked 600 hours would have \$600 contributed and a member who worked 999 hours would have \$999 contributed. Both would be entitled to the same proportion of the annual benefit credited, i.e. 1/4. However, using the hour bands above, if the member who worked 999 hours should work just one hour more, the employer would contribute one additional dollar but that member's proportion of the annual benefits credited would jump from 1/4 to 1/2.

The PCO is no longer accepting such a schedule as being gradual and uniform because the change in the proportion of the year credited is not truly reflective of the member's actual hours worked or the contributions made to the fund. The only acceptable method of recognizing hours (and contributions) is to provide a benefit pro-rated over the number of hours which represent a full year. For example, if a full year's benefit is earned after working 1,800 hours, then a member who works 600 hours is entitled to a credit of 600/1,800 or 1/3 of a year.

When Administrators recorded benefit accruals manually, the use of hour bands or salary schedules was a method which was easy to calculate and to administer. However, with computers so widely used in pension plan administration today, Administrators can provide benefits which are fairer to the employees without being more difficult to administer.

Administrators should review their pension plans to determine if such schedules are in use, and arrange to have affected plans amended for **future** accruals only. This administrative practice deals only with accrual of benefits after the employee becomes a member of the pension plan; this is to ensure that benefits are received for every hour worked. It does not deal with or affect eligibility for membership, requirements for which are set out in section 32 of the PBA, 1987.

Commonly Asked Questions

Q. Can an employer who is starting a new pension plan make it mandatory for all current employees to become members? Alternatively, could the plan be voluntary for current employees and mandatory for employees who begin work after the effective date of the pension plan?

A. Yes to both. The PBA, 1987 does not prohibit mandatory membership; it is the PCO's policy to encourage as much employee participation as possible. However, if an employer wishes to make the plan voluntary for current employees and mandatory for new employees that is also permissible.

Q. What is the Reciprocal Agreement between the provinces?

A. The original reciprocal agreement was signed between Ontario, Quebec and Alberta in 1968. Saskatchewan, Manitoba, Nova Scotia and Newfoundland had joined by 1986. The original agreement is still in force. This agreement allows the registering province to administer the legislation applicable to members employed in another province. For example, a plan registered in Alberta has 10 members, eight in Alberta and two in Ontario. The Alberta members have five-year vesting pursuant to Alberta's legislation; however, Alberta applies Ontario's two-year vesting rule to the members in Ontario.

Q. What is a fully-insured money purchase group annuity?

A. A fully-insured money purchase group annuity is an arrangement whereby a premium is paid to the insurer, who in return promises to pay a pension benefit defined in accordance with the terms of the group policy contract.

Q. What is the responsibility of a plan sponsor if an employee terminating membership in a fully-insured money purchase group annuity chooses the section 43 transfer option of a locked-in RRSP?

A. Normally, when a money purchase group annuity contract is established, the insurance company agrees to pay the pension benefit when the

member retires. If a member terminates employment and selects a section 43 transfer option, the plan sponsor must comply with the selection; however, the insurance company is not obligated to alter the established contract. If the insurance company chooses, it will set the amount for which the member's policy will be released. The plan sponsor is responsible for making up any shortfall between this amount and the minimum commuted value as prescribed by the Regulation. Under the terms of a typical guaranteed annuity contract, there is no obligation on the part of the insurance company to release the policy, in which case the plan sponsor would be responsible for the entire amount.

Q. If an employee terminating membership chooses the section 43 option of transferring the commuted value to another pension plan, must the Administrator of the new plan accept the transfer? If the transfer is accepted, must it be for the entire amount?

A. No. There is no obligation on the Administrator of another pension plan to accept transferred funds. The portion of the commuted value accepted is at the discretion of the Administrator.

Q. What does the term "YMPE" mean? What is the amount for 1991?

A. The term "YMPE" refers to Year's Maximum Pensionable Earnings. The YMPE is a figure determined under the Canada Pension Plan and based on the Industrial Average Wage published by Statistics Canada. The YMPE for 1991 is \$30,500.

Q. How should sponsors and Administrators advise the PCO that the Statement of Investment Policies and Goals has been reviewed or amended?

A. A letter is sufficient for this purpose. It should refer to the plan's name and registration number. It should state that the Statement of Investment Policies and Goals (SIP&G) has been reviewed and confirmed, or that it has been amended. If there has been an amendment, the text of the amendment should accompany the letter. There are no forms to complete and there is no need to file a revised or amended SIP&G.

Appointment of Administrators

PURSUANT TO SECTION 72

of the PBA, 1987, the Superintendent of Pensions has appointed Administrators to wind up the pension plan(s) of the following companies. These Administrators were appointed owing to the insolvency of the companies.

The Superintendent will appoint outside Administrators from an established roster where the matters are complex or there are a large number of pension plan members involved.

<u>Company*</u>	<u>Administrator</u>	<u>Date of Appointment</u>
Carpita Corp. (3)	Peat Marwick Thorne Inc.	09/13/90
Deilcraft Furniture (3)	Coopers & Lybrand Ltd.	09/13/90
Ontario Wire and Steel (1)	Superintendent of Pensions	01/05/90
Usarco Limited (1)	Ernst & Young Inc.	09/13/90
Vinylink (1)	Superintendent of Pensions	09/13/90
Wallace-Davey (1)	Superintendent of Pensions	09/13/90

* the number in brackets indicates the number of pension plans involved.

Proceedings Before the Commission

Requests for Hearings/Applications

a) HOOPP

A decision of the Commission from the hearing held on October 11, 1990 on the preliminary issue of whether the Commission has jurisdiction to require a hearing resulting from the Superintendent's refusal to make an order pursuant to section 88 of the PBA, 1987 to compel the OHA to comply with clause 8(1)(e). The Commission decided that it did have jurisdiction and re-

leased its reasons for judgement on November 27, 1990. These reasons follow on page 12. The hearing on the substantive issues will be held March 4 and 5, 1991 at 9:00 a.m..

b) General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

The Commission hearing on standing was held on November 1, 1990. A pre-hearing will be held January 25, 1991 and the hearing will commence April 8 - 11, 1991.

c) American Federation of Musicians' and Employers' Pension Welfare Fund (Canada)

A request for hearing resulting from a Notice of Proposal to Make an Order pursuant to section 88 of the PBA, 1987 issued by the Superintendent. The hearing is scheduled for January 23, 1991 at 9:30 a.m.

The Commission's decisions in these matters will be reported in a future issue of the PCO Bulletin.

Decisions

IN THE MATTER OF a Decision of The Superintendent of Pensions
pursuant to Section 88 of the Pension Benefits Act, 1987;

AND IN THE MATTER OF a Request for a Hearing pursuant to Section 90 of the Pension Benefits Act, 1987;

BETWEEN:

The Canadian Union of Public Employees, the Ontario Public Service Employees' Union, the Service Employees' International Union, John A. Askin, Robert Hebdon and Bruce Land	Applicants
- AND -	
The Ontario Nurses Association	Applicants
- AND -	
The Ontario Hospital Association	Respondent
- AND -	
The Superintendent of Pensions	Intervenor

BEFORE: Eileen E. Gillese, Vice-Chair, and Board members Donald Collins and Deborah Hanscom

APPEARANCES: Mark Zigler, for the Applicants, Canadian Union of Public Employees ("CUPE"), Ontario Public Service Employees' Union, Service Employees' International Union, John A. Askin, Robert Hebdon and Bruce Land;

Chris G. Paliare and Martha Milczynski, for the Applicants, the Ontario Nurses Association;

Donald J.M. Brown and John M. Solursh, for the Respondents, the Ontario Hospital Association;

Ian Scott for the Intervenor, Superintendent of Pensions.

**DATE OF THE
HEARING:**

October 11, 1990
Toronto, Ontario

**DECISION OF
THE BOARD:**

November 22, 1990

FACTS

On June 21, 1988, the Canadian Union of Public Employees, the Ontario Public Service Employees' Union, the Service Employees' International Union, John A. Askin, Robert Hebdon and Bruce Land (the "Unions") applied to the Superintendent of Pensions, Pension Commission of Ontario (the "Superintendent") for an order under subsection 88(1) of the Pensions Benefit Act, 1987 (the "Act"). The Unions requested an order directing the Hospitals of Ontario Pension Plan ("HOOPP") to comply with the requirements of section 8(1)(e) of the Act on the basis that clause 8(1)(e) provides that a multi-employer pension plan ("MEPP"), established pursuant to a collective agreement or a trust agreement, must be administered by a board of trustees of whom at least one half are representatives of members of the plan.

HOOPP is a large MEPP with over 300 participating hospitals and related employers and covering over 70,000 employees in the hospital field. Members of the Unions and the Ontario Nurses Association ("ONA") comprise a large proportion of the membership of HOOPP. Before 1988, the HOOPP pension plan was administered by a pension committee. The pension committee included representatives from each of the four unions that represented the organized contributing membership in HOOPP. On or about June 1, 1988, the Ontario Hospital Association ("OHA") Board of Directors adopted certain amendments to the HOOPP text. Among the amendments was one purporting to transfer the administration of the plan from the pension committee to an OHA administered plan.

The ONA objected to the purported amendments and wrote to the Superintendent requesting that he take action pursuant to section 88. In addition to seeking an order along the same lines as that requested by the Unions, the ONA sought an order declaring that, because the OHA was but one employer in a large MEPP, the OHA could not be appropriate administrator of the plan under the Act.

After receiving submissions from all parties, the Superintendent issued a decision on April 28, 1989 ("the Decision") in which he refused to issue the order as requested.

In the Decision, the Superintendent held that although HOOPP fell within the definition of a MEPP, it was not created pursuant to a collective agreement or a trust agreement but, rather, pursuant to a resolution of the Board of Directors of the OHA. He found in any event that section 8 of the Act is permissive and does not require administration of a MEPP by a clause 8(1)(e) board of trustees. "A MEPP may have any of the options set out in subsection 8(1), clauses (a) through (f)." As the OHA, in his opinion, fell within the definition contained in clause 8(1)(a) of the Act, it was a proper administrator for HOOPP.

The Superintendent went on to hold that the proposed substitution of the OHA for the pension committee as administrator of HOOPP was a change that adversely affected Plan members. As a result, pursuant to subsection 27(1) of the Act, the Superintendent required that notice of the proposed change be sent to all members of HOOPP and all former members or other persons entitled to a payment from the fund who were represented by the applicants. The Superintendent stated that he would be unable to register the amendment until 45 days had passed following the giving of such notice.

Within 30 days of the issue of the Decision, counsel for the Unions applied to the Pension Commission of Ontario (the "Commission") requesting a hearing in respect of the subject matter of the Decision, namely, whether HOOPP was required to comply with clause 8(1)(e) of the Act. The ONA made a similar application. The OHA and the Superintendent opposed the application on the basis that the Commission did not have jurisdiction to hold a hearing or an appeal with respect to the Decision.

The initial issue of jurisdiction was argued before the Commission on October 11, 1990, after written submission by all parties. An oral decision of the panel hearing the matter was rendered that day holding that the Commission had jurisdiction to hear the matter. Written reasons were to follow. These are those reasons.

ISSUE

Does the Commission have jurisdiction to hold a hearing or entertain an appeal from a refusal by the Superintendent to issue an order pursuant to subsection 88(1) of the Act?

THE ACT

The Commission accepts that, as a creature created by statute, it derives all of its powers from its enabling legislation (i.e. the Pensions Benefits Act, 1987). Thus, the Commission has no inherent jurisdiction to hear this matter.

The sections of the Act relied upon by the applicants as establishing the Commission's jurisdiction are subsections 88(1) and 90(4), clause 90(2)(e), and section 97. Section 97 will be dealt with later; the other provisions are set out below.

88. - (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 90 (hearing and appeal), by written order may require an administrator or any other person to take or to refrain from taking any action in respect of the pension plan or pension fund.

...

90. (2) Where the Superintendent proposes to make an order under,...

(e) section 88 (administration of pension plan or contravention of Act or regulations),
the Superintendent shall serve notice of the proposal, together with written reasons therefor on the administrator and on any other person to whom the Superintendent proposes to direct the order.

...

(4) Where the Superintendent proposes to refuse to give an approval or consent or proposes to attach terms and conditions to an approval or consent under this Act or the regulations the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant for the approval or the consent.

Subsection 88(1) of the Act gives the Superintendent the power to make a written order requiring an administrator to act or to refrain from taking any action in respect of a pension plan.

The Superintendent's powers under subsection 88(1) are subject to both the requirements contained in subsection 88(2) and the right of hearing and appeal contained in section 90. Subsection 88(2) is inapplicable in the instant case as it sets out the grounds upon which the Superintendent may make an order directing someone to take a positive act.

Clause 90(2)(e) stipulates that where the Superintendent proposes to make an order under section 88, notice of the proposal to make the order must be served on certain persons. A notice of proposal to make an order served pursuant to clause 90(2)(e) triggers the right to a hearing before the Commission under subsection 90(6) of the Act. The powers of the Commission at such a hearing are those contained in subsections 90(9) and (10).

90. - (6) A notice under subsection (1), (2), (3), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Commission if the person delivers to the Commission, within 30 days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

...

(9) At or after the hearing, the Commission by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Commission considers the Superintendent ought to take in accordance with this Act and the Regulations, and for such purposes, the Commission may substitute its opinion for that of the Superintendent.

(10) The Commission may attach such terms and conditions to its order or to the registration as the Commission considers proper to give effect to the purposes of this Act.

Thus, the issue becomes whether the Decision of the Superintendent is "a proposal to make an order" within the meaning of that phrase as contained in subsection 90(2).

Both the Unions and the ONA argued that jurisdiction might be conferred by subsection 90(4). The Decision, while a refusal to accede to the Unions and the ONA's request for an order, does not fall within the ambit of subsection 90(4). A clear reading of subsection 90(4) shows that it is intended to apply to situations in which the Superintendent refuses to give an approval or proposes to attach terms and conditions to an approval. In the instant case, the Unions and the ONA sought an order from the Superintendent compelling the OHA to comply with clause 8(1)(e); there was no request for his approval of anything. If the OHA gives notice as required by the terms of the Decision for the amendments to be validly made, the Superintendent will have to decide whether to consent to or refuse to register the amendment. At that stage, subsection 90(4) may become relevant but at this stage it is inapplicable.

JURISDICTION OF THE COMMISSION

All parties are agreed that had the Superintendent made the order as requested by the Unions and the ONA, the OHA would have had a right to a hearing pursuant to clause 90(2)(e) and a right of appeal of the Commission's decision to Divisional Court pursuant to subsection 92(1). However, the OHA and the Superintendent submit that, as the Superintendent decided against making such an order, the Unions and the ONA have no such rights. Were the Commission to accept this view, it would lead to the result that a decision by the Superintendent aggrieving one side would give it broad procedural rights but a decision aggrieving the other side would give it no rights at all. The only legal recourse, on this view, for the Unions and the ONA and their tens of thousands of plan members would be an application to the courts by way of judicial review of the Decision, with its high threshold test of patent unreasonability.

This inequity would be exacerbated if and when the Superintendent proposed to refuse to register the proposed amendment by the OHA as subsections 18(1) and (2) would entitle the OHA to a hearing under subsection 90(4) and section 92 would give the OHA a further right of appeal to Divisional Court.

Apart from these inequities, several other factors must be borne in mind when construing sections 88 and 90 of the Act.

First, the legislature would have intended fair play for both sides and, where possible, the Act should be construed to provide fair and equitable treatment for all concerned. It would take very clear language indeed to persuade the

Commission that inequitable treatment of the sort envisaged by the OHA and the Superintendent was intended.

Second, the general scheme of the Act is that initial jurisdiction lies in the Superintendent with rights of appeal or a hearing to the Commission. (There are rare circumstances in which the Commission has rights of first instance such as matters involving surplus withdrawals from pension funds.) The supervisory power and obligation in the Commission over the Superintendent is apparent upon a reading of subsection 95(2), wherein the Superintendent is appointed by the Commission, and subsection 95(4) under the terms of which the Superintendent is obligated to perform the duties vested in or imposed upon him by, "...this Act, the Regulations and the Commission." Where possible, clause 90(2)(e) must be given an interpretation which enables the Commission to fulfill its supervisory obligations pursuant to subsection 95(4) and its overall duty "to administer this Act and the regulations" pursuant to subsection 97(1).

It may be that the practical necessity of reviewing the Superintendent's decision creates certain powers in the Commission by necessary implication from the nature of the regulatory authority contained in subsection 97(1) but we leave that argument for another day.

Third, the Act is remedial in nature with one of its basic objectives to protect and enhance the rights of plan members. Section 10 of the Interpretation Act dictates a similar approach to construction.

While we are mindful of the submissions of the OHA that the Collins case (Re Collins v. Pension Commission of Ontario (1986), 56 O.R.(2d) 275(HC)) antedated the passage of the Act, the spirit of the admonition of the Divisional Court set out therein remains unchanged.

It is difficult to imagine why the Commission was established without accepting that its principal function was to protect the interests of plan members

...

While the Commission may not, strictly speaking, be a trustee for the [plan] members, for it holds no money belonging to the plan, it would be artificial to conclude that the Commission's obligation to members is lower than the high standard of fiduciary obligation imposed on trustees.

(Re Collins v. Pension Commission of Ontario (1986), 56 O.R.(2d) 275 at page 285)

This fiduciary obligation to protect the interests of plan members, when possible and legally acceptable, can only be viewed as being reinforced by passage of the Act. Indeed, the Act was an apparent response to the Collins case. Interpreting the provisions of the Act as broadly as possible, where a broad interpretation would preclude a situation which is manifestly unfair to plan members, is consistent with the Commission's fiduciary obligation. If the Unions and the ONA have no recourse to the Commission, plan members themselves can have no recourse from the unfavourable decision of the Superintendent. Such an interpretation of the legislation would make it very difficult for the Commission to fulfill its "watch dog" role over the interests of plan members.

Fourth, the Act creates, in section 90, a process called a "hearing" which is not circumscribed by the rigid rules which apply to appeals. For example, a right of appeal cannot be implied as it must be expressly set out in legislation. The hearing, as something procedurally distinct from an appeal, is not circumscribed by such a rule.

Returning to the key issue we ask again: can clause 90(2)(e) be read so that the phrase "proposes to make an order" includes a proposal to refuse to make an order? We are of the view that it can be. The fact that the Superintendent issued his decision in letter form thereby failing to comply with the formalities of subsection 90(2) does not make the Decision any less a proposal to make an order. (Firestone Canada Inc. v. Pension Commission of Ontario (1988) CCH Canadian Employment Benefits and Pension Guide Reports, para. 8070.)

An order expressed in the negative may still be an order in the sense contemplated by subsection 90(2) of the Act.

This principle has been held to exist in England in R.V. Recorder of Oxford [1969] 3 All E.R. 428 and upheld in Canadian courts in Dunnett v. Williams (1919), 45 D.L.R. 514 (Sask KB). Although those cases are clearly distinguishable on their facts, the reasoning behind the decisions is helpful.

"I have no doubt whatever but that adjudging a complaint to be dismissed is an order made on determining a complaint."

(R.V. Recorder of Oxford [1969] 3 All E.R. 428 at page 430)

And

"It seems clear to me that the word "order" in the Temperance Act is a broad enough term to cover the act of dismissal and was so intended."

(Dunnett v. Williams (1919), 45 D.L.R. 514 (Sask KB) at page 515)

CONCLUSION

A refusal by the Superintendent to make an order pursuant to subsection 88(1) amounts to an order, within the meaning of clause 90(2)(e), thereby triggering the right of the Unions and the ONA to a hearing before the Commission pursuant to subsection 90(6) of the Act.

Dated at Toronto this 22nd day of November, 1990

On behalf of:

Eileen E. Gillese, Vice-Chair

Donald Collins, Member

Deborah Hanscom, Member

Commission Decisions - Applications Approved Since August, 1990

Applications Approved Under Clause 7a(2)(b) of the Regulation and Subsection 79(1) of the PBA, 1987 - Surplus Withdrawal on Wind Up

At the Commission meeting held August 16, 1990, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

**a) Koh-I-Noor Rapidograph
(Canada) Ltd. Pension Plan for
Employees (C-26043)**

Refund of plan surplus amounting to \$136,422, with interest to the date of distribution, to the employer subject to the adoption by the company of the draft plan amendment.

At the Commission meeting held September 27, 1990, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

**a) Proctor & Redfern Limited -
(C-100322)**

Refund of plan surplus amounting to \$14,884.53 plus accrued interest to the company.

**b) Proctor & Redfern Limited -
(C-100324)**

Refund of plan surplus amounting to \$48,910 plus accrued interest to the company.

**c) Merrill Lynch Canada Inc.-
(C-100519)**

Refund of plan surplus amounting to \$25,640 plus interest to the date of distribution to the employer.

Applications Approved under Subsection 64(7) of the PBA, 1987 - Requests for Return of Member Contributions

At the Commission meeting held August 16, 1990, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

**a) The Staff Pension Plan for Employees of
the Hamilton Society for the Prevention
of Cruelty to Animals (C-12611)**

Refund of member required contributions in the amount of \$83,243.

**b) Granada TV Rental Limited Pension
Plan for Employees (C-14416)**

Refund of member required contributions in the amount of \$1,026,966 subject to the adoption by the company of the draft plan amendment dated August 2, 1990.

**c) Beckers Lay-Tech Inc. Pension Plan
for Designated Executive Employees
(C-16422)**

Refund of member required contributions in the amount of \$22,763 as at October 31, 1988 with interest.

**d) DRG Inc. Pension Plan for
Executive Employees (C-16303)**

Refund of member required contributions in the amount of \$96,579.48 as at January 1, 1990.

At the Commission meeting held September 27, 1990, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

**a) Federal Industries Group Offices
Plan (C-13206)**

Refund of member required contributions in the amount of \$53,300 plus credited interest as at December 31, 1988.

**b) Simcoe Eric Investors Limited
Retirement Plan for Employees
(C-11625)**

Refund of executive members' required contributions plus interest in the amount of \$173,108.26.

**c) Constitution Insurance Company
of Canada Staff Pension Plan for
Employees (C-12431)**

Refund of member required contributions in the amount of \$566,000 as at January 1, 1990 with interest.

At the Commission meeting held October 25, 1990, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

**a) Allpak Limited Employees'
Retirement Plan (C-9753)**

Refund of member required contributions in the amount of \$67,840 as of January 1, 1989 plus interest on the condition that the employer files proof with the Superintendent of Pensions that a lump sum payment equal to the amount to be refunded has been remitted to the plan fund by the employer. '

***Applications Approved Under Subsection
79(4) of the PBA, 1987 - Requests for Return
of Employer Payments or Overpayments***

At the Commission meeting held September 27, 1990, the Commission consented pursuant to subsection 79(4) of the PBA, 1987 to the refund of overpayments.

**a) Jergens Canada Inc. Retirement
Plan for Employees (C-497)**

Refund of overpayments of \$71,836 to the employer.

At the Commission meeting held October 25, 1990, the Commission consented pursuant to subsection 79(4) of the PBA, 1987 to the refund of overpayments.

**a) Pension Plan for Senior Executive
Employees of Real Time, Division of
Memotec Data Inc. (C-14837)**

Refund of overpayments of \$22,500 to the employer.

Superintendent's Decisions

Notices of Proposal to Make an Order

The Superintendent issued a Notice of Proposal to Make an Order under subsection 90(5) [Notice of Proposed Wind Up Order] of the PBA, 1987 dated August 22, 1990 for the following pension plan:

- a) Revised Pension Plan for Employees of 747969 Ontario Limited O/A Amlin Cartage Limited.

The Superintendent issued a Notice of Proposal to Make an Order under subsection 90(2) [Notice of Proposal to Make an Order] of the PBA, 1987 dated August 27, 1990 for the following pension plan:

- a) Pension Plan for the employees of Tri-Clover Canada Ltd. successor corporation to Ladish Co. of Canada Ltd.

The Superintendent issued a Notice of Proposal to Make an Order under subsection 90(5) [Notice of Proposed Wind Up Order] of the PBA, 1987 dated November 5, 1990 for the following pension plan:

- a) Pension Plan for Employees of Canada Decal Inc.

Orders

The Superintendent issued an Order under section 88 [Order by Superintendent] of the PBA, 1987 dated August 3, 1990 for the following pension plan:

- a) Revised Pension Plan for Employees of 747969 Ontario Limited O/A Amlin Cartage Limited.

The Superintendent issued an Order under section 70 [Winding Up Order by Superintendent] of the PBA, 1987 dated October 3, 1990 for the following pension plan:

- a) Revised Pension Plan for Employees of 747969 Ontario Limited O/A Amlin Cartage Limited.

The Superintendent issued an Order under section 88 [Order by Superintendent] dated October 12, 1990 for the following pension plan:

- a) Pension Plan for the employees of Tri-Clover Canada Ltd., successor corporation to Ladish Company of Canada Ltd.

*Summary of changes to regulation 708/87 under the Pension Benefits Act, 1987**

<u>Date of Publication in The Ontario Gazette</u>	<u>Section of Regulation</u>	<u>Explanation</u>
March 5, 1988	7a	Added to impose moratorium on surplus withdrawals from wound up plans until February 8, 1989, unless specific exceptions met.
March 5, 1988	43(1a)	Added to exempt certain benefits from PBGF coverage (deemed consent benefits under subsection 41(3) and subsection 75(7) of Act).
March 12, 1988	7b	Added to permit offset of current service costs against surplus (in excess of two years current service costs) when converting fully funded defined benefits to defined contribution benefits.
July 16, 1988	7a(2)(d)	Added to exempt surplus payments already consented to by PCO before February 8, 1988 from moratorium on surplus withdrawals from wound up plans.
July 16, 1988	21(1)	Amended to require crediting of interest on contributions made to defined contribution plans on behalf of members.
July 16, 1988	21(1a)	Added to permit members' contributions to be credited with a greater rate of return than is required.
July 16, 1988	72(4)	Amended to extend first filing deadline for financial statements.
December 31, 1988	7a(1)	Amended to extend moratorium on surplus withdrawals from wound up plans to December 31, 1989.
December 31, 1988	43(4),(5)	Added to exempt plans from subsections 80(2) and (5) of Act (surplus provisions in ongoing and wound up plans) for the period January 1, 1989 to December 31, 1989.
April 15, 1989	43(3a)	Added to exempt public service plans (PSSF, TSF) from section 72 (filing of financial statements) for fiscal years ending in 1989 and 1990.
October 28, 1989	16(1)	Amended to refer to more recent CIA guidelines on minimum transfer values.
October 28, 1989	43(3b)	Added to exempt TSF from subsection 39(1) of Act (restrictions related to termination of MEPP membership).
December 16, 1989	7a(1)	Amended to extend moratorium on surplus withdrawals from wound up plans to December 31, 1990.
December 16, 1989	43(2a),(2b)	Added to extend deadlines for conforming plan amendments to December 31, 1990.
December 16, 1989	43(4),(5)	Amended to extend exemption from surplus provisions to December 31, 1990.
December 16, 1989	63(5)	Amended to clarify that deadlines for filing "Statements of Investment Policies and Goals" (SIP & G's) <u>not</u> extended.
December 30, 1989	2	Amended to increase plan registration fees (from \$4 to \$5 per member).
December 30, 1989	15	Amended to increase Annual Information Return (AIR) fees (from \$4 to \$5 per member).
December 30, 1989	43(6)	Added to exempt two National Hockey League plans from section 8 and subsection 23(6) of Act (requirements regarding plan administrators and trustees).
August 11, 1990	7c	Added to impose additional requirements for surplus withdrawals from on-going plans.
August 11, 1990	23a	Added to prescribe a date for permitting access to surplus in on-going plans found in subsection 80(10) of Act.

Audit Reports

Pension Commission of Ontario Statement of Revenue and Expenditure for the year ended March 31, 1990

	1990 (\$000s)	1989 (\$000s)
Revenue		
Registration fees and annual information return filings fees	<u>3,335</u>	<u>2,516</u>
Expenditure		
Salaries and wages	2,721	2,399
Employee benefits	333	337
Transportation and communication	173	161
Services	694	680
Supplies and equipment	<u>562</u>	<u>183</u>
	<u>4,483</u>	<u>3,760</u>
Excess of expenditure over revenue	<u>1,148</u>	<u>1,244</u>

Notes to Financial Statement

1. **SIGNIFICANT ACCOUNTING POLICIES**

The financial statement has been prepared by management. The significant accounting policies used to prepare this statement are summarized below.

(a) **Basis of accounting**

This financial statement has been prepared using the cash basis of accounting except an additional five days is allowed to pay for debts incurred during the fiscal year just ended.

(b) **Fixed assets**

Fixed assets are expensed when purchased.

2. **REVENUE AND EXPENDITURE**

Revenue is deposited into the Consolidated Revenue Fund of the Province of Ontario. Expenditure is paid out of moneys appropriated therefor by the Legislature of the Province of Ontario.

Certain administrative expenses have been absorbed by the Ministry of Financial Institutions. Office space is provided by the Ministry of Government Services without charge.

3. **SUPPLIES AND EQUIPMENT**

Further details of the supplies and equipment expenditure are as follows:

	1990 (\$000s)	1989 (\$000s)
Information technology related equipment	163	32
Furniture	239	16
Supplies and others	<u>160</u>	<u>135</u>
	<u>562</u>	<u>183</u>

4. **PENSION PLAN**

The Commission provides pension benefits for all its permanent employees through participation in the Public Service Pension Fund established by the Province of Ontario. The Commission's share of contributions to this Fund during the year was \$124,921 and is included in employee benefits in the Statement of Revenue and Expenditure. This amount includes current contributions and additional payments required to cover the Commission's share of the Fund's estimated unfunded liabilities on January 1, 1990. These additional payments will continue over the next 40 years.

*Pension Commission of Ontario
Statement of Pension Benefits Guarantee Fund
for the year ended March 31, 1990*

	1990 (\$000s)	1989 (\$000s)
Income		
Premium revenue	2,331	1,300
Interest income	209	467
Recoveries	3	116
	<u>2,543</u>	<u>1,883</u>
Expenses		
Claims	28,652	6,024
Investment management fees	11	24
Refund of premium revenue	5	29
Interest expense	426	0
	<u>29,094</u>	<u>6,077</u>
(Deficiency) of income over expenses	(26,551)	(4,194)
Unrealized changes in market value of investments	<u>26</u>	<u>(57)</u>
	(26,525)	(4,251)
Balance in Fund, beginning of year	<u>2,470</u>	<u>6,721</u>
Balance in Fund, end of year	<u>(24,055)</u>	<u>2,470</u>
Consisting of:		
Cash and short term deposits	878	130
Government Bonds at market (cost - \$500; 1989 - \$2,330)	478	2,282
Accrued interest	15	58
Loan from the Province of Ontario, including accrued interest (note 3)	<u>(25,426)</u>	<u>0</u>
	<u>(24,055)</u>	<u>2,470</u>

Notes to Financial Statement

1. SIGNIFICANT ACCOUNTING POLICIES

The financial statement has been prepared by management. The significant accounting policies used to prepare this statement are summarized below.

(a) Basis of accounting

This financial statement has been prepared using the cash basis of accounting except interest income and interest expense are recorded on an accrual basis.

(b) Investments

Investments in Government Bonds are stated at their quoted market value. Unrealized changes in market value reflects the change in unrealized gains or losses that has occurred by holding investments over the year.

2. PURPOSE OF FUND

The purpose of the Fund, which is administered by the Pension Commission of Ontario, is to guarantee payment of pension benefits of certain defined benefit pension plans that are wound up under conditions specified in the Pension Benefits Act, 1987 and regulations thereto. The regulations also prescribe the amount of the premiums required to be paid into the fund by plan sponsors.

If, at any time, the amount standing to the credit of the Fund is insufficient to meet payments for claims, the Lieutenant Governor in Council may authorize the Treasurer of Ontario to make loans out of the Consolidated Revenue Fund to the Fund on such terms and conditions as the Lieutenant Governor directs.

3. LONG-TERM DEBT

Pursuant to an Order in Council, a \$25 million loan was made from the Consolidated Revenue Fund to the Pension Benefits Guarantee Fund to satisfy the claims arising from the Massey Combines Corporation's Canadian Salaried and CAW Pension Plans. Interest on the amount of the loan outstanding is calculated at 10.54% per annum compounded annually. The amount of the loan outstanding and interest are to be repaid on February 1, 1995. Total interest accrued as at March 31, 1990 is \$425,931. A total of \$3 million of the loan was repaid in July 1990.

4. CONTINGENCIES

There are seven potential claims relating to the closure of seven companies and the wind up of their pension plans. The liability to the Fund relating to these claims is estimated at \$13 million.

Special Summary of Articles

For the convenience of the reader we are providing this summary of articles for the four issues of the Bulletin comprising Volume 1.

	Date	Volume/ Issue	Page
Features			
- Administrator: Key Role, Key Person	May/90	1/2	8
- Class of Employees - issues affecting	September/90	1/3	10
- Dialogue with the PCO	September/90	1/3	1
- Identifying Barriers to Pension Coverage	September/90	1/3	14
- Investment Responsibility: Prudence in Action	May/90	1/2	9
- M.J. Regan Appointed Chairman of the PCO	May/90	1/2	1
- Speech by PCO Chairman Joseph Regan - coverage	September/90	1/3	4
Articles			
- Actuarial Assumptions Guidelines for Pension Officers	February/90	1/1	8
- Audit Reports of the PCO and the PBGF	December/90	1/4	19
- CAPSA: Working Towards Uniformity	December/90	1/4	7
- Central Registry for Pooled Fund Documents - update	September/90	1/3	12
- Derivative Instruments - Investing with Options and Futures	September/90	1/3	13
- Development of Information Systems	December/90	1/4	6
- Financial Statements - More Work to be Done	December/90	1/4	5
- Financial Statements - Fund Statements or Plan Statements	May/90	1/2	14
- How to Get Assistance from the PCO	February/90	1/1	2
- How to Obtain Information Under Freedom of Information and Protection of Privacy	February/90	1/1	6
- Mandate, Background and Structure of PCO	February/90	1/1	4
- More on PCO Organization and Branch Functions	May/90	1/2	2
- Pension Industry-Related Organizations	May/90	1/2	15
- Revision of the AIR	December/90	1/4	4
- Role of the Appointed Commission and Registrar	May/90	1/2	3
- Security Investment Allowed under Regulation 75	December/90	1/4	3
- Statement of Investment Policies & Goals: How to Deal with the Conflict of Interest Requirement	February/90	1/1	7
- Summary of Changes to the Regulation	December/90	1/4	18
Special Messages			
- Change of Address	December/90	1/4	23
- Delinquent Filings	December/90	1/4	23
- Director, Secretariat - announcement of readership survey	September/90	1/3	5
- Director, Secretariat - welcome to the first issue	February/90	1/1	2
- Readership Survey - pop-up card	December/90	1/4	8
- Superintendent - increasing and maintaining voluntary compliance	December/90	1/4	1
- Superintendent - legal effect of registration	September/90	1/3	5
- Superintendent - welcome to the first issue	February/90	1/1	1
Notices			
- Access to surplus in a continuing pension plan - new regulation	September/90	1/3	6
- Advisory committee update - membership	September/90	1/3	7
- AIR deadline reminder	May/90	1/2	4

- Compliance Assistance Guidelines now available	February/90	1/1	4
- Firestone decision - Supreme Court releases reasons	September/90	1/3	7
- Future pension conference/seminar dates to be published	May/90	1/2	4
- Multicultural project - retirement financial planning	September/90	1/3	9
- One person pension plans	December/90	1/4	8
- PCO moves to self funding	February/90	1/1	3
- PCO participates in 1990 Financial Forum	February/90	1/1	3
- Pension advisory committees established	May/90	1/2	4
- Plant closing and layoffs	December/90	1/4	9
- Policy concerning plan member enquiries	May/90	1/2	4
- Quebec Supplemental Pension Plans Act	December/90	1/4	9
- Receive future Bulletins/Guidelines	February/90	1/1	4
- Workers' Compensation Amendment Act - pension plan amendments required	September/90	1/3	8

Administrative Practices

- Change of carrier of plan assets	February/90	1/1	7
- Collection of contributions and delinquencies - MEPPs	May/90	1/2	8
- Deadline for filing AIRs with fees	February/90	1/1	7
- Filing of AIRs	May/90	1/2	5
- Freedom of Information - interim practice	February/90	1/1	8
- Gradual and uniform accrual in MEPPs	December/90	1/4	9
- Gradual and uniform accrual of benefits	May/90	1/2	7
- Letters of credit	September/90	1/3	9
- Plan mergers - general procedures	May/90	1/2	6
- Refunds of employer overpayments	May/90	1/2	5

Questions & Answers

- Administrative expenses - during wind up	May/90	1/2	13
- Administrative expenses - what kind	September/90	1/3	17
- Adverse amendments	September/90	1/3	17
- AIR - completion in advance	February/90	1/1	6
- AIR - didn't get one	February/90	1/1	6
- Advisory Committee - what is the purpose	February/90	1/1	6
- Conversion from defined contribution to defined benefit	May/90	1/2	13
- Difference between contributory and non-contributory	May/90	1/2	14
- Fully-insured money purchase group annuity - what is it	December/90	1/4	10
- Fully-insured money purchase group annuity - section 43 transfer option, responsibility of plan sponsor	December/90	1/4	11
- Insurance company - when is it the Administrator	May/90	1/2	14
- Investment policy return	September/90	1/3	17
- Investment policy return	December/90	1/4	11
- Joint and Survivor - what is the purpose	February/90	1/1	6
- Locking-in - what are the rules	February/90	1/1	5
- Locked-in RRSPs - what are the rules	February/90	1/1	6
- Mandatory membership	May/90	1/2	13
- Mandatory membership	December/90	1/4	10
- Part-time employees - summer students	May/90	1/2	14
- Partial wind up - what constitutes a significant number	September/90	1/3	17
- Purchase and sale agreement - prior to 1/1/88	May/90	1/2	13
- Reciprocal agreement	December/90	1/4	10
- Suspension of Membership - is it permitted	February/90	1/1	6
- Time limits - termination statements	May/90	1/2	14
- Transfer option - commuted value	December/90	1/4	11
- Year's Maximum Pensionable Earnings - what is it	December/90	1/4	11

Major Commission Decisions

- Hospitals of Ontario Pension Plan (decision under section 8(1)(e) of the PBA, 1987	December/90	1/4	12
- Otis Canada Inc., pension plan for Draftsmen			

Local 164 (decision under subsections 79(1) and 80(4) of the PBA, 1987 and clause 7a(2)(c) of the Regulation	February/90	1/1	16
- Otis Canada Inc., pension plan for Steel Workers Local 7062 (decision under subsection 82(1) of the PBA, 1987)	February/90	1/1	11
Other Decisions			
- Freedom of Information Appeal #880334, Order 125	February/90	1/1	18
- Superintendent's Decisions, Notices of Proposal to Make Orders, Orders, PBGF Declarations	May/90	1/2	18
- Superintendent's Decisions, Notices of Proposal to Make Orders, Orders, PBGF Declarations	September/90	1/3	18
- Superintendent's Decisions, Notices of Proposal to Make Orders, Orders, PBGF Declarations	December/90	1/4	16
Appointment of Administrators			
- Administrators appointed - 01/06/88 - 04/25/90	May/90	1/2	17
- Administrators appointed - 05/03/90 - 06/22/90	September/90	1/3	17
- Administrators appointed - 01/05/90 - 09/13/90	December/90	1/4	17
Forms			
- English and French versions of Spousal Waiver of Pre-Retirement Death Benefit and Spousal Waiver of Joint and Survivor Pensions	September/90	1/3	centre
- French version of Spousal Waiver of Pre-Retirement Death Benefit	February/90	1/1	19

Have you Moved?

WE WANT YOU to receive information when you need it and to help you avoid costly late filing fees.

To do this we need to keep our mailing list up-to-date. You can help: please notify us as soon as your mailing information changes. Make sure your PCO mail is addressed to the right person at the right address.

Remember, Annual Information Returns are mailed using the last recorded address. If you do not receive your Return because you have moved, and your Return is subsequently filed late, you will be charged the applicable late filing fee.

Help us help you — keep us informed. To update mailing information please write or fax:

PCO Data Control Section
101 Bloor Street West
9th Floor
Toronto, Ontario
M7A 2K2
FAX: (416) 972-5812

Delinquencies

Actuarial Reports/Cost Certificates/ Annual Information Returns

In the September PCO Bulletin it was announced that all plan sponsors with delinquent filings had been identified and contacted by letter. If you have received a delinquency letter from the PCO, and have not yet submitted your filings, please do so immediately.

Investment Policy Returns

PCO staff have determined that a significant number of pension plans have not filed their initial Investment Policy Return which was required by December 31, 1989.

Failure to file will result in further action by the Superintendent to ensure compliance with the legislation.

Contacts for PCO Enquiries

Actuarial	Teck Go	972-5799
Annual Information Returns	Rose Ann Drakes	972-5782
Communications	Camille Curson	972-5800
Financial Statements	Larry Falconer	972-5809
Freedom of Information Requests	Ken Doiron	972-5798
General Enquiry - Secretariat	Lynn Barron	972-5825
Policy Issues	Jerry Williams	972-5826
Mailing List	Lynn Barron	972-5825
PCO Bulletin/Compliance Assistance Guidelines	Camille Curson	972-5800
Pension Benefits Guarantee Fund (Administration)	Margaret Fennell	972-5785
Plan Registration - Forms		972-5784
Plan-specific Enquiry (state plan name and/or provincial registration no.)		963-0522
Registrar/Secretary to the Commission	Mary Crocker	972-5815
Statements of Investment Policies & Goals/Investment Policy Return	Jules Huot	972-5821

Note: Acronyms will be used throughout the PCO Bulletin and Compliance Assistance Guidelines to make the publications more readable.

AIR - Annual Information Return
CAPSA - Canadian Association of Pension Supervisory Authorities
CIA - Canadian Institute of Actuaries
CICA - Canadian Institute of Chartered Accountants
ISSG - Information Systems Services Group
FOIPOP - Freedom of Information and Protection of Privacy
IPR - Investment Policy Return
MFI - Ministry of Financial Institutions
OSC - Ontario Securities Commission
PBA, 1987 - *Pension Benefits Act, 1987*
PCO - Pension Commission of Ontario
SIP&G - Statement of Investment Policies and Goals

Are You On Our Mailing List?

Owing to mailing and production costs the PCO anticipates **not** sending future Bulletins and Compliance Assistance Guidelines to our mailing list of registered plans (you are on this list if the mailing label shows your plan's provincial registration number). **If you would like to be on our supplementary mailing list to continue to receive the PCO Bulletin and Compliance Assistance Guidelines please write, or fax at 972-5812, to Lynn Barron, or call directly at 972-5825.** If you have already responded to this request your name has been added to the Bulletin and Guidelines mailing list and you may disregard this notice.

Although every effort has been made to ensure the accuracy of the material contained in this publication, it is provided for information purposes only. Acts and regulations mentioned in this publication may be reviewed in most public libraries or obtained through Publications Services, Ministry of Government Services, 880 Bay Street, Toronto, Ontario M7A 1N8.

The PCO Bulletin is published quarterly by the Pension Commission of Ontario, 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2 (416) 963-0522 FAX (416) 972-5812. Articles may be quoted with acknowledgement.

THE PENSION COMMISSION OF ONTARIO BULLETIN

March, 1991

Vol. 2, Issue 1

A Message from the Superintendent of Pensions

THE PENSION community is well aware that the number of pension plan wind ups has increased recently; what the community may not be aware of is the effect of the increased workload on our regulatory system.

The processing of this increased workload and mounting backlogs create a growing and serious concern for the Commission. We are addressing this situation by examining the wind-up process and looking for ways to streamline it. We are setting up special mechanisms, partly organizational and partly compliance to deal with it. These mechanisms will assist plan sponsors through the compliance aspect of the wind-up process.

The Compliance Assistance Guideline #4 Revised, dated December 1990, on pension plan wind ups gives a complete step-by-step outline of what to do.

We have also recently designed the wind-up checklist to help Administrators prepare the proper documentation and follow the process. It also serves as a guide for PCO staff to follow when checking for compliance.

Together these pieces will form the PCO wind-up package to guide Administrators. If you decide to wind up your plan the first step should be to call your PCO pension officer. The pension officer will send you a complete wind-up package so you can plan the process knowingly.

A plan wind up sets off a complex process of events for both the plan sponsor and the PCO. The requirements are outlined in section 69 to 78 of the PBA, 1987. Each step outlined in these sections is important. These sections are there to protect the ultimate pension promise made to each member of the plan.

In subsection 69(2) the Administrator is required to give written notice to the Superintendent and other prescribed parties of a proposal to wind up the pension plan in whole or in part. Subsection 71(1) requires the Administrator to file a wind-up report with the Superintendent and obtain the



Ontario



HIGHLIGHTS

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*An interview with Nurez Jiwani,
Director of the Pension Plans Branch*

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*Vesting and locking-in —
an assurance of retirement income*

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Pension community consults on revised AIR

page eleven

Commonly Asked Questions

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Mandatory retirement: the pension perspective

page fourteen

Protecting pensions: the Pension Benefits Guarantee Fund

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Decisions

page seventeen

Superintendent's consent prior to distribution of the plan assets.

The Superintendent may refuse to give consent to a wind-up report that does not meet legislative requirements or that does not protect the interests of the members and former members of the pension plan under subsection 71(5).

At the PCO, a pension officer reviews the notice of proposal to wind up the plan and the wind-up report for compliance. The officer's job is to ensure that:

- the effective date of the wind up complies with subsection 69(5);
- an amendment winding up the plan has been filed;
- the determination of plan assets and liabilities complies with the legislative requirements;
- the distribution of any surplus assets to plan members and former members is in accordance with plan provisions and administrative practices established by PCO staff;
- the proposed funding of any deficits meets the minimum requirements of the legislation; and
- all other legislative requirements concerning wind-ups have been met.

The distribution of surplus assets remains a difficult problem for Administrators and plan sponsors. The staff of the PCO expect to be able to disseminate guidelines for distribution procedures shortly.

Message from the Director of the Secretariat

IN 1990 the Secretariat initiated three distinct methods for communication and consultation — all of which have brought very encouraging results.

The first issue of the PCO Bulletin and Compliance Assistance Guidelines were launched in February, 1990. In our December, 1990 Bulletin we included a Readership Survey to find out what our readers liked and used in the Bulletin, and what suggestions they would make for future issues. We are pleased with the initial response, and our preliminary results of the survey are found on page 4 of this issue.

In September, 1990 the PCO established the Actuarial Advisory Committee, the Legal Advisory Committee and an Interfirm Auditing Committee.

Our discussions with all of these groups have been extremely helpful, and we wish to thank all the individuals involved.

And finally, in November, 1990 we developed a Rapid Communications Network. The intention of the Network is to provide timely information by fax to the professionals in the pension field. Response to the establishment of the Network has been generally positive, and expansion of this communications medium is being considered as part of our information technology plan.

We thank you for the many comments and suggestions we have received on our communications initiatives, and we hope to utilize as many as possible in the coming year.

Priscilla H. Healy
Director, Secretariat

Pensions are a People Issue - Excerpts from a Recent Speech by the Minister

"I BELIEVE PENSIONS is one of our most critical issues; pension policy affects people at a time of life when they are often most vulnerable, and because of changing demographics [pension policy] is expected to become a dominant issue in our society," said Peter Kormos, Minister of Financial Institutions in his January 23rd speech to the Canadian Bar Association (Ontario) Pension and Benefits Section.

Mr. Kormos emphasized that the PCO's mandate, aside from regulating, is to expand pension coverage through education. He applauded the PCO for its recently launched public awareness program. This program brings pension and retirement education to the four largest multicultural groups — Chinese, Greek, Italian and Portuguese — in Ontario. "Many new Canadians work in poorly paying jobs without pension plans ... in discussions with representatives of these groups, we found a serious need for retirement planning information."

The Minister then touched on two of the Government's most controversial issues — pension plan surpluses and indexation of pension benefits. It continues to be the Government's position that pension plans are deferred wages and thus surplus belongs to the members to be used for benefit improvements. It is also the Government's position that pension benefits should be indexed. When the current legislative review process has been completed, Mr. Kormos said, clear direction on pension

policy and surplus ownership and indexation will be provided.

Mr. Kormos emphasized that the consultation process on pension reform is still continuing. "Pension issues have been in the courts recently, and we will be looking at these decisions in our examination of the issues." He spoke briefly on the family law aspect of pensions saying, "There is a need to look again at the provisions concerning splitting of pension benefits to make sure they are fair to both parties." He welcomed views and opinions from all those individuals concerned with the direction of pension legislation in this province. "The decisions we make concerning pensions will affect the ability of thousands of people to retire with dignity and economic security," he said in stressing why the consultation process and its ultimate results are so vitally important to the future of private pension plans in Ontario.

He underscored the need for new and innovative ways to ensure that the growing number of seniors in Ontario can retire with dignity. "I believe we have to look beyond narrow traditional ways of thinking; this is a people issue."

New Brochures Make Communicating Easier

TWO NEW BROCHURES

published by the Pension Commission of Ontario are helping plan sponsors communicate complex pension reform legislation to plan members. The brochures are two of the first pieces the Commission has created as part of a campaign to help plan sponsors and Administrators communicate pension and retirement information to employees and prospective employees.

The brochure that will be of most interest to plan members is called: **How Pension Reform affects your retirement future**. In clear, easy-to-understand terms the brochure explains:

- what a pension plan is;
- about the different types of pension plans; fifteen key reasons why pension reform means more retirement security; and
- how to contact the Pension Commission for more information.

Commission staff receive many calls from employers and busy human resources staff who are having difficulty explaining terms like vesting and locking-in. These brochures will help solve these communications issues. Plan members will find definitions in the brochures such as:

"The commuted value is the amount of the immediate lump-sum payment that will be transferred into the [investment] option of your choice when you leave your job. This payment is estimated to be equal in value to future series of pension payments you would receive when you retire..."

The other brochure, **The Pension Commission of Ontario: Committed to your retirement future**, is a general information piece on the Commission. Whether you are a plan member, sponsor, Administrator, retiree or media representative, you will find useful information in this three panel pamphlet including:

- what the Commission is responsible for;
- what we can do for our clients;
- new services and directions;
- the Pension Benefits Guarantee Fund; and
- how to contact the Commission.

This brochure is also written in a reader-friendly style and will provide an overall perspective of pensions in Ontario. A reader will learn that:

"There are more than 9,000 employers in Ontario who provide pension plans. These plans cover more than 1.8 million workers. At the Pension Commission of Ontario our job is to make certain these plans can fulfill their promises to worker and retirees."

Plan members will be reassured to know:

"If a company winds up a pension plan because of financial problems, sometimes promised benefits cannot be paid from the pension fund. The PCO administers the Pension Benefits Guarantee Fund. The fund will make up the shortfall in most cases to protect workers' retirement security."

Both PCO brochures have been produced in English and French and will fit into a letter size envelope. A copy of each has been included with this Bulletin for your review. Please circulate them to any departments that may find them useful such as: human resources, personnel, your payroll department or union stewards. They are printed on non-glossy, recycled stock in keeping with the government's policy of "reduce, reuse and recycle".

If you would like to obtain more copies of the brochures for your workplace you can place an order with the order form provided in this issue of the Bulletin. You can order each of the brochures in quantities of up to 50 at no charge. If you require more, we will be able to provide you with the name of our printer who can produce reprints for you and bill directly.

For your convenience we will be running our order form from time-to-time in future issues.

Readers make recommendations for Bulletin '91

IN ORDER TO SERVE

our clients better in the second Volume of the PCO Bulletin, we canvassed you through a readership survey enclosed in the last Bulletin of Volume I, dated December, 1990.

We were very pleased with your response to the survey and the positive feedback suggesting ways to improve the Bulletin. We received almost 200 client cards with comments and recommendations. Thank you for the time you took to participate in the survey and for sharing your ideas.

Many respondents wanted the following changes:

"Drill the left margin for a 3-ring binder (like the Guidelines)";

"The section 'Commonly Asked Questions' should be expanded to include more questions in view of new legislative (Ontario and Federal) requirements"; and

"List article authors".

You will notice we have taken your suggestions to heart. We agree that many of them will improve content, presentation and the general usefulness of the publication. If you have questions you want included in the "Commonly Asked Questions" section, please send them to Lynn Barron by letter or fax.

Some of you asked:

"Could you provide an Index organized by subject matter and include the Compliance Assistance Guidelines. This would be helpful."

In our December 1990 issue we published our first index, categorized by subject. We plan to continue this practice annually.

A number of respondents were concerned about timeliness:

"Good useful document, but could be more timely — December 1990 issue not received until January 25, 1991."

PCO staff work very hard to get the Bulletin out to suppliers by an internal production deadline. Sometimes however, the nature of policy development and practice together with delays in the production process slow us down. We will make every effort to get the Bulletin into your hands on a timely basis.

Some of you are satisfied customers and want more, but others feel it is too early yet to comment:

"Excellent Bulletin — All I could ask for is more of the same";

"It's too early to change it. I like it as is";

"More frequently therefore more timely"; and

"Your Bulletins are well produced. As a consulting actuary I find them most helpful."

Others requested:

"More details behind reasoning on decisions";

"More increased employee input on issues"; and

"Short summaries of the more technical matters."

The editorial committee is considering all requests and how they might be accommodated. We will keep you informed concerning content and presentation changes in future issues.

Some comments are bewildering and confront us with the challenge of trying to please everyone — all of the time. Some responses are inconsistent. For instance, to the question, "How often do you read the Bulletin?" one person answered, "Read it when it arrives. But, too few yet to be *comprehensive enough* as a reference document (emphasis added)." When asked about improvements the reply from this person was, "It's rather lengthy — I only read certain sections."

Another respondent asked if we could supply the Bulletin electronically or on computer diskette. While the technology is available and this option may prove viable in the future, the cost at this time is prohibitive.

Our goal is to make the PCO Bulletin and Compliance Assistance Guidelines a useful part of your pension management activities. The PCO Bulletin is published to clarify and explain the legislative administrative rules and policies as defined by the PBA, 1987, in order to facilitate compliance, ease administration and improve communications between government regulators and the pension community. If you have ideas you believe can help us achieve this mandate, your comments and suggestions for articles are encouraged and appreciated.

We welcome your calls anytime to discuss recommendations or ideas. Please contact Ken Doiron, Manager, Research and Communications at (416) 972-5798.

Notices

Amendment to the Regulation Regarding Filing and Annual Fee Increases

THE REGULATION, O.Reg. 651/90, was published in *The Ontario Gazette* on December 29, 1990. The regulation has the effect of increasing the registration and annual filing fees.

REGULATION TO AMEND ONTARIO REGULATION 708/87 MADE UNDER THE PENSION BENEFITS ACT, 1987

- Section 2 of Ontario Regulation 708/87, as remade by section 1 of Ontario Regulation 700/89, is revoked and the following substituted:**

2.- (1) *The application fee for registration of a pension plan that has members in Ontario or in a designated province is \$6 for each of those members.*

(2) *The application fee for registration of a pension plan administered by the Commission under an agreement with the Government of Canada under section 96 of the Act is \$6 per member.*

(3) *The minimum application fee for registration of a pension plan is \$200 and the maximum application fee is \$12,000.*

- Subsections 15(2), (3) and (4) of the Regulation, as remade by section 2 of Ontario Regulation 700/89, are revoked and the following substituted:**

(2) *The filing fee for an annual information return for a pension plan that has members in Ontario or in a designated province is \$6 for each of those members.*

(3) *The filing fee for an annual information return for a pension plan administered by the Commission under an agreement with the Government of Canada under section 96 of the Act is \$6 per member.*

(4) *Subject to subsection (5), the minimum filing fee for an annual information return is \$200 and the maximum filing fee is \$12,000.*

- Section 15 of the Regulation, as it read immediately before this Regulation came into force, continues to apply with respect to an annual information return respecting a fiscal year that ends on or after the 31st day of December, 1989 and before the 31st day of December, 1990.**

Amendment to the Regulation Regarding Extension of Deadlines

The regulation, O.Reg. 650/90, was published in *The Ontario Gazette* on December 29, 1990. The regulation has the effect of extending the moratorium on the withdrawal of surplus on wind up in subsection 7a(1) of the Regulation, and of extending the effective date of surplus-related deeming provisions in subsections 80(2) and (5) of the Act.

REGULATION TO AMEND ONTARIO REGULATION 708/87 MADE UNDER THE PENSION BENEFITS ACT, 1987

- Subsection 7a(1) of Ontario Regulation 708/87, as remade by section 1 of Ontario Regulation 651/89, is revoked and the following substituted:**

(1) *Subject to subsection (2), no payment may be made from surplus out of a pension plan that is being wound up in whole or in part until the 31st day of December, 1991.*

- (1) Subsections 43(2a) and (2b) of the Regulation, as made by section 2 of Ontario Regulation 651/89, are revoked and the following substituted:**

(2a) *Every employer who maintained a pension plan on the 1st day of January, 1988 is exempt from subsection 19(1) of the Act for the period ending on the 31st day of December, 1991.*

(2b) *The parties to a collective agreement or arbitration award governing a pension plan described in subsection 19(2) of the Act are exempt from that subsection for the period ending on the 31st day of December, 1991.*

- Subsections 43(4) and (5) of the Regulation, as remade by section 2 of Ontario Regulation 651/89, are revoked and the following substituted:**

(4) *Every pension plan that, on the 1st day of January, 1989 did not provide for the withdrawal of surplus moneys while the pension plan continues in existence is exempt from subsection 80(2) of the Act for the period beginning on the 1st day of January, 1989 and ending on the 31st day of December, 1991.*

(5) *Every pension plan that, on the 1st day of January, 1989 did not provide for payment of surplus moneys on the wind up of the pension plan is exempt from subsection 80(5) of the Act for the period beginning on the 1st day of January, 1989 and ending on the 31st day of December, 1991.*

These regulations were distributed via our Rapid Communications Network and to everyone on our mailing list in December, 1990.

Court Decisions

The following notices respecting decisions of the Ontario courts are expected to be of interest to professionals practising in the pension field. Copies of the decisions may be obtained for a photocopying fee from the particular court referenced in the notice.

**RE: John A. Askin et al. and The Ontario Hospital Association et al.
Court of Appeal File # 546/88**

The applicants, employee beneficiaries of the Hospitals of Ontario Pension Plan (the "plan"), applied to the court for a declaration that decisions made by the Pension Committee of the Hospital of Ontario Pension Plan to recommend reduced hospital contributions for the years 1984 to 1987 inclusive, and to recommend the waiver of any hospital contributions in 1988, were void. The applicants also sought a declaration that certain of the individual respondents were acting in conflict of interest to the beneficiaries of the plan, and for a declaration that certain respondents breached their fiduciary and statutory obligations to the beneficiaries.

Orders were also sought directing that the hospitals pay into the fund the amount of the allegedly improper reductions in contributions together with interest, and that there be no further reductions or waivers of contributions in the future.

Mr. Justice Yates in a short endorsement dated August 3, 1988 dismissed all claims. The applicants appealed and the Court of Appeal, in a unanimous decision released February 20, 1991, dismissed the appeal with costs against the appellants.

A copy of the Court of Appeal's decision with reasons may be obtained from the Court of Appeal, Osgoode Hall, 130 Queen Street West, Toronto, Ontario M5H 2N5, or call (416) 327-3020.

**RE: CUPE et al and The Ontario Nurses Association and The Ontario Hospital Association.
Divisional Court File # 1159/90**

CUPE and the Ontario Nurses Association had requested a hearing before the Pension Commission under section 90 of the PBA, 1987 relating to a decision made by the Superintendent of Pensions. The Ontario Hospital Association and the Superintendent of Pensions opposed the request on the basis the Commission did not have jurisdiction.

On November 22, 1990 the Commission decided it had the jurisdiction to hold a hearing related to a decision made by the Superintendent of Pensions and proceeded to set dates for a hearing to deal with the issues. The Ontario Hospital Association appealed the jurisdictional issue to Divisional Court.

The judgement of Mr. Justice Davidson, rendered on February 18, 1991, quashed the attempt to appeal a preliminary decision of the Pension Commission of Ontario.

The decision of the court affirms the ability of the PCO to make preliminary decisions on the issue of jurisdiction which may not be appealed before the substantive issues are resolved by the Pension Commission.

A copy of the judgement with reasons may be obtained from The Divisional Court, 130 Queen Street West, Toronto, Ontario M5H 2N5, or call (416) 327-5100.

**RE: Otis Canada, Inc. in respect of the pension plan for Steel Workers Local 7062.
Court File # RE 1457/90**

In the February 1990 issue of the Bulletin, a decision of the Commission was published concerning an application for surplus withdrawal of Otis Canada Inc. in respect of the pension plan for Steel Workers Local 7062.

In its decision, the Commission found that the requirements of subsection 80(4) were met; however, the Commission made no finding as to ownership of the pension funds. This issue was referred to the courts.

The employer then went to Weekly Court and sought an entitlement Order.

The judgement of Madame Justice Corbett granted legal entitlement of the surplus pension funds to the employer on February 26, 1991.

A copy of this decision with reasons may be obtained from Weekly Court, Room #125, 145 Queen Street West, Toronto, Ontario M5H 2N9 or call (416) 327-5463.

**RE: Ventra Group Inc. v. the Pension Commission of Ontario, Windsor Mouldmakers Union Local 1680 Canadian Labour Congress and Mutual Life Assurance Company of Canada.
Court File # 90/SM/02235**

In its application to the court, Ventra Group Inc. sought a declaration that it is beneficially entitled to surplus in its retirement income plan established by the terms of an agreement between the applicant and the respondent union.

The Pension Commission brought a preliminary motion objecting to the status of the Commission as a joinder to the matter, on the basis that if the Commission were a party to the case, the exercise of its discretion under Section 80 of the PBA, 1987 would not be possible. Section 80 gives the Commission statutory powers to withhold its consent to payment of surplus to an employer until certain preconditions are met.

Mr. Justice Abbey granted the motion and struck the Commission as a party to the proceed-

ings. This decision appears to make it clear that the Commission should **not** be named as a party in a surplus entitlement case.

Mr. Justice R. J. Abbey rendered his judgement with reasons on December 21, 1990; copies of it may be obtained from Ontario Court (General Division), 245 Windsor Avenue, Windsor, Ontario N9A 1J2 or call (519) 973-6620.

Sharing of Surplus - the Québec Approach

The government of Québec recently released a discussion paper entitled *Sharing Surplus Assets Equitably*. Québec's proposal is based on two principles: providing long-term financial security of pension plans while recognizing the contributions of each party to plan funding. The proposal takes the position that a pension plan is a contract under which both employer and employees have made promises concerning funding. The contributions of each party must be maintained according to the arrangement, and if there are surplus assets, they must benefit both parties. The method for fair and equitable distribution of surplus is developed on that basis. The following excerpts from the discussion paper further clarify the position taken:

"During the period of plan funding, each of the contracting parties honours its agreement by contributing to the plan according to the express or implied agreement between them. The contribution of each party to plan funding and consequently to the enterprise's retirement policy can be direct and occurs in the form of member contributions and employer contributions ... The government is of the opinion that no valid reason exists when a plan develops a surplus to change the sharing of responsibility for plan funding by the contracting parties ... The government believes that in order to ensure fairness, the sharing of surplus assets must be proportional to the direct or indirect contribution that each party has made to the pension fund."

In Ontario, the surplus debate and study continues. The Government is currently examining all the issues in order to prepare its position.

Québec Supplemental Pension Plans Act - Ontario Plans with Québec Members

The December, 1990 issue of the PCO Bulletin contained a Notice with respect to plans registered in Ontario to which the Québec *Supplemental Pension Plans Act* may apply. The deadline for filing all amendments to comply with the Act's new requirements was December 31, 1990. For plans where members are governed by a collective

agreement that was in effect on January 1, 1990 the filing deadline is three months after the signing of a new collective agreement.

The PCO can authorize the extension for the amendments in question on a **plan-by-plan basis only**, upon application by the Administrator. To obtain an extension to the filing deadline, please direct your request to the PCO, noting that you are seeking the extension to comply in conjunction with the Ontario deadline for restated plan documents.

At the request of the Régie des Rentes du Québec, and to assist those plans which must restate their plan texts to comply with the Québec requirements, the PCO is distributing a four-part Newsletter (Newsletter #10) and a Checklist published by the Régie. This Newsletter and Checklist will be sent to only those Ontario-registered plans which have Québec members.

Actuarial Advisory Committee Update

In the September, 1990 issue of the Bulletin we published the initial membership list for the Actuarial Advisory Committee and indicated that additional members would be announced at a later date.

The Committee, a sub-committee of the CIA standing committee called the Liaison Committee With Government Authorities on Pension Matters, has been expanded to eight members.

Chairman	Paul Saunders	GBB Buck Consultants Limited
Members	David Short	Eckler Partners Limited
	Owen O'Neil	TPF & C Limited
	Josephine Marks	Sun Life Assurance Company of Canada
	Bill Cuthbert	London Life Insurance Company (London)
	Marvin Ens	W.M. Mercer Ltd. (Toronto)
	Peter Robinson	MLH + A Inc. (Toronto)
	Gary Stoller	Wyatt Company (Toronto)

Financial Statements - Correction

In the December, 1990 Bulletin an article entitled *The Development of Information Systems at the PCO* reported that financial statements are required within 90 days of the fiscal year-end of the plan. This statement was made in error. Financial statements are required to be filed **within six months** after the fiscal year-end of the plan, not 90 days as reported in the article. We apologize for any confusion this error may have caused.

An Interview with Nurez Jiwani, Director of the Pension Plans Branch



MR. JIWANI joined the PCO in 1983; he was appointed Manager in 1987 and Senior Manager of the Defined Benefits section of the Pension Plans Branch in 1989. Mr. Jiwani worked in the pension field with

William M. Mercer and The Alexander Consulting Group prior to coming to the PCO. He graduated with an MBA in Finance from McMaster University in 1982.

Mr. Jiwani, your branch seems to have a broad mandate. Please describe it to us.

The branch mandate seems broad because it supports the far-reaching mandate of the PCO as prescribed in the legislation. All branches of the PCO are concerned with a balanced regulatory environment that is fair to all parties. Our overall objective is to encourage employers to register pension plans and to assist sponsors with pension management to assure continuation of their pension plans. The PCO also communicates to plan members and the general public through brochures and presentations to heighten awareness of general retirement financial planning.

The Pension Plans Branch is responsible for ensuring that the approximately 9,000 pension plans registered with the PCO comply with the requirements of the legislation in Ontario and, where these plans have members in other jurisdictions, the legislation of those jurisdictions as well. The primary goal of the branch is to ensure that the requirements of the legislation are met. By facilitating compliance in this way, we achieve a fundamental pension principle: protection of members' benefits and entitlements.

Can you tell us specifically how these goals are achieved?

The best way of explaining what this branch does and how we achieve these goals is to begin by outlining how we are organized to serve the pension industry and plan members.

The branch has a staff of approximately thirty organized into three sections.

Some responsibilities of the Defined Benefits Section are registering new plans and amendments to registered plans; processing applications for asset transfers resulting from sales of business, mergers and re-organizations; and processing plan conversions and partial wind-ups of on-going defined benefit plans. A primary concern of this section is the monitoring of plan funding through

review of triennial actuarial reports and administrative enforcement in instances of non-compliance with funding requirements of the legislation.

The Defined Contribution, Multi-Employer and Public Sector Plans Section is responsible for registering new plans and amendments, processing applications for asset transfers and partial wind ups and addressing areas of non-compliance in on-going defined contribution, multi-employer and public sector plans.

The Special Plans Section is responsible for processing applications for plan wind ups and surplus applications on wind up. The Section also has an Insolvency Unit that coordinates the administration of more than seventy pension plans of insolvent companies where the Superintendent is or has appointed an outside Administrator.

All three Sections also have an important day-to-day responsibility to respond to written and verbal enquiries. We receive enquiries from plan members as well as trade unions, MPPs and other member representatives. Pension Officers and Assistants play a major role in resolving many issues raised by plan members and their representatives.

What is the major challenge you face as Director at this time?

BACKLOG! The one thing that is a major concern to each of us is our increasing backlog situation. It is an unacceptable situation that frustrates plan sponsors, plan members and certainly our staff. We have initiated a number of tactics to deal with the situation which I will discuss. First, let's review the reasons for the backlog. Perhaps you will find them illuminating.

Four years ago the total staff of the PCO was thirty. Today there are over eighty people that attend to the detail of pension regulation in this province. In the intervening years, extensive reforms were enacted into law providing better pensions and benefits but adding to regulatory requirements for plan sponsors to meet and regulatory authorities to ensure. While the changes in legislation provided many benefits, it did create an enormous increase in the paper flow. As a result, the filings requiring extensive review have increased four-fold. The in-depth review of restated plan documents and pension plan wind ups are good examples of the impact of legislative requirements on workload levels.

We could serve you better, and recognize you wish to help us. You can help us to serve you better by ensuring documents filed with us are properly completed. We cannot process documents that are incomplete or wrong and documents filed in error result in frustrating delays. The

**PCO PUBLICATIONS -
ORDER FORM**

Mail order form to:

**Research & Communications
Department
Pension Commission of Ontario
101 Bloor Street West, 9th Floor
Toronto, Ontario M7A 2K2**

Brochures

Quantities of these brochures are limited to 50 per plan sponsor or organization. For larger quantities, please contact Lynn Barron at 972-5825 for information.

***The Pension Commission -
Committed to Your
Retirement Future***

A 5-page brochure describing the mandate and function of the Pension Commission of Ontario. Available in English and French.

Quantity _____

Language _____

***How Pension Reform Affects
Your Retirement Future***

A 12-page brochure explaining many pension reform issues affecting employer-sponsored pension plans. This brochure is especially important for pension plan members. Available in English and French.

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***Retirement - Your
Responsibility***

A 5-page brochure emphasizing the importance of retirement planning. Available in English, French, Italian, Portuguese, Chinese and Greek.

Quantity _____

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Questions***

A 12-page brochure which asks and answers many of the common questions concerning Federal pension programs, employer-sponsored pension plans, and retirement savings products. Available in English, French, Italian, Portuguese, Chinese and Greek.

Quantity _____

Language _____

Compliance Assistance Guidelines

Quantity

- _____ #1 A Guide to Preparing an Application for Registration of a Pension Plan
- _____ #2 A Guide to Preparing an Annual Information Return
- _____ #3 A Guide to Preparing, Reviewing and Amending a Statement of Investment Policies and Goals (SIP&G)
- _____ #4 A Guide to the Wind Up of a Pension Plan (Revised)

PCO Bulletin

Quantity

- _____ February, 1990 - Volume 1, Issue 1
- _____ May, 1990 - Volume 1, Issue 2
- _____ September, 1990 - Volume 1, Issue 3
- _____ December, 1990 - Volume 1, Issue 4
- _____ March, 1991 - Volume 2, Issue 1

I am interested in holding a pension presentation for my employees. Please contact me:

Name: _____

Company: _____

Address _____

Phone No.: _____

Please add me to your mailing list to continue receiving the PCO Bulletin and Compliance Assistance Guidelines:

Name: _____

Company: _____

Address _____

PCO Bulletin and Compliance Assistance Guidelines were developed to address this issue. They are designed to assist you to file correctly so processing delays may be minimized.

We need you to work with us cooperatively and to accept that pension policy continues to evolve.

Our objective is to manage the current backlog and eliminate it. We have been working towards improving efficiency through resolution of policy issues, establishing procedures, and training and developing staff. Soon, we will be implementing stage one of our Information Technology Plan involving six business systems featuring AIR processing and the Central Plan Data Base.

You have been quoted as saying that on-site plan examinations will be put in place. How soon is this likely to happen?

Our first challenge as mentioned previously is to become more efficient and eliminate the backlog. As we do this, we want to take a more pro-active approach as regulators by conducting on-site examinations of pension plan administration. As a pilot project, we will be carrying out some on-site examinations for the next two years. We expect to convert to this pro-active role on a full scale in the early part of 1993.

The Commission has been criticized for being narrow and legalistic in interpreting the Act. How would you respond to this?

Let's put things into perspective. Over the past five years, surplus ownership has been the driving force behind most court cases and Commission hearings. In numerous instances the lack of clarity of a plan's documents has created uncertainty about the ownership of surplus and indeed, several judges have suggested that the only solution is a legislative solution. Staff therefore, have little choice but to question plan amendments that utilize surplus assets to increase benefits for only a few of the members, possibly to the detriment of others. Examples of such plan amendments are: providing early retirement windows for specific individuals; providing for refunds of member-required contributions for Directors only; or, engineering plan mergers to utilize surplus assets in one plan to fund deficits in another plan. We realize some professionals are not in agreement with our positions on these issues.

Through consultation, the PCO has established policies and administrative practices to deal with such issues. These are published in the PCO Bulletin and in Compliance Assistance Guidelines. Many professional advisors meet with us to review their proposals and our requirements before implementing major plan amendments. This dialogue has proven to be very successful. By clarifying our requirements in this way, plan sponsors can better plan, set and achieve their objectives.

Staff recognize that there are many areas where legislation requires clarification and we will work towards reducing the ambiguities in the existing Act.

With respect to processing and backlog...exactly how large is it?

We currently have a backlog of around 13,000 submissions. At our current rate of processing, this means it takes us, on average, 8 months to process a submission.

You have already noted the frustration the backlog creates, but how do you reconcile an eight month turnaround with the idea of customer service?

It is frustrating for our clients as well as ourselves. Despite this we at the Commission take pride in what we do. . . we serve the public in a very meaningful way. Because of the measures being taken, we are confident that in the near future we will be able to provide the kind of service we feel we must provide to effectively serve plan sponsors and members.

It is important to remind pension professionals again that it is their client's responsibility to comply with the legislation. Let me share with you two examples.

In one case, an actuary filed 35 wind-up reports none of which met requirements which are clearly outlined in the legislation. We called the actuary into our office to guide him through the legislation. The alternative would have been a lengthy exchange of correspondence. In another case, a team of professionals flew in from Western Canada to discuss specific cases where they said our staff had not given approvals in spite of extensive correspondence over two years. In that meeting, we reviewed the same requirements and guidelines that staff already outlined in correspondence. These situations are time consuming and are not unusual.

Fortunately, most professionals do work within established guidelines and make our job easier.

What are you doing about this situation?

The senior management team at the Commission has confronted this problem. We have analyzed the current and future workload levels and staffing requirements. At the same time, we are continuing our efforts to improve efficiency by establishing standard procedures, staff training and development, and structural re-alignment to become a more customer-service oriented organization.

As we do so, we are forwarding our goal of positive pension regulation for a pension system in which all parties win.

We appreciate the cooperation and understanding you extend to us, and you can be certain we are taking every possible step to improve our service.

Administrative Practices

Wind-up Checklist to be Filed with Wind-up Report

THIS ADMINISTRATIVE

practice will be implemented and takes effect in March. All Administrators of pension plans winding up are required to file this new Superintendent's form with the wind-up report.

When the notice of proposal to wind up a pension plan is filed, the Pension Officer will send a letter of acknowledgement that includes:

- a summary of the filing requirements for wind up; and
- the wind-up checklist.

The checklist will assist the Administrator with the wind-up process. The **wind-up checklist, the wind-up report and all other required documents such as all outstanding AIRs must be filed before the wind up will be processed.**

Vesting and Locking-in — An Assurance of Retirement Income

The caller is angry, "What do you mean I can't get the money out! It's my money."

I reason with him, "Sir, pension legislation says that pension money must only be used to give you a pension when you reach retirement age."

He persists, "The money was taken out of my paycheque. I earned it. Why should the government have the right to tell me what to do with it?"

I explain further the protection of retirement benefits.

"Who's talking about retirement", he says, "I'm going to Las Vegas next week — I was counting on that money".

This scenario really happened — along with countless others.

The more difficult calls come from former members hit severely by the recession who want their money unlocked to pay their mortgage or outstanding bills.

As the country continues to feel the tightening grips of the recession, and as more pension

plans wind up, one of the most common questions directed at the PCO by plan members is "why can't I unlock my locked-in pension?"

As much as we sympathize with people in their times of immediate need, the legislation and its underlying spirit are clear — locked-in pension money is to be used to provide a pension at retirement.

"I just left my job and my employer tells me my pension money is locked-in. They never told me this would happen when I joined the plan!"

Many callers tell us that they were not informed when they joined the plan that their pension contributions would become locked in, yet vesting and locking-in of pension benefits are two of the foundation stones of the pension system. Vesting means that the employee is entitled to the value of the pension benefit. Vesting is also a right that may not be taken from the employee if the employee leaves the employer before retirement. However, vesting takes on its full meaning when complemented by the concept of locking-in of those benefits (in the case of a defined benefit plan) and contributions (in the case of a defined contribution plan). Locking-in means that the proceeds must be used to provide for retirement income only.

One of the welcome features of pension reform is the ability of employees to transfer their pension entitlement upon leaving employment. In the event the employee leaves the employer prior to retirement, the pension benefits either accompany the employee to another company pension plan (if the company is willing to accept the pension credits) or, are paid in a lump sum, in lieu of the retirement benefit, and may be transferred for deposit to a locked-in RRSP established to hold the monies and defer tax until retirement. These monies may be used only to provide retirement income.

Another benefit of locking-in lies in the exemption of pension benefits or the lump sum payment from possible execution, seizure (by creditors, for instance) or attachment as indicated in section 67 of the PBA, 1987. With the exception of a marital breakdown situation where a court order enforceable in Ontario requires payment for support or maintenance, pension benefits and monies are fully protected.

Until 1988 vesting and locking-in of pension contributions took place only after the member was age 45 and had ten years of service. With the increasing mobility of the workforce, a majority of pension plan members never fulfilled the vesting requirements of 45 years of age and ten years of service, and accordingly were not entitled to a pension from their employer. This realization necessitated reform. In 1988, the PBA, 1987 provided

that vesting and locking-in would occur after a maximum of two years of plan membership for contributions accrued as of January 1, 1987, regardless of the member's age. This new provision has ensured that a majority rather than a minority of plan members will have a pension when they reach retirement. This is the objective that the PBA, 1987 and the PCO serve to achieve.

Administrators Must Communicate

The number of calls we receive from members on the issues of vesting and locking-in indicates to us a lack of communication on the part of pension plan sponsors. Vesting and locking-in are complex ideas for plan members to grasp; but, it is the responsibility of the plan's Administrator to explain them. It is also incumbent on plan sponsors to explain why locking-in of pension funds is necessary if retirement income is to be assured. Plan sponsors must make members aware from the outset that a pension plan is not a glorified "savings" account. Pension benefits are meant to provide pension income. Other assets must be saved for times of hardship or opportunity.

The PCO has produced several brochures that will assist pension plan sponsors in explaining retirement planning and pensions in clear, easy-to-understand terms. The brochure **How Pension Reform Affects Your Retirement Future** explains vesting, locking-in and other pension terms to plan members. The brochures **Retirement Planning: Your Responsibility** and **Retirement Planning: Key Questions** examine the reality of retirement — a possible 75% cut in income. They address the questions of life expectancy, future cost considerations and where the money will come from to pay for retirement. They also discuss why deferring taxable income in a pension plan and why retirement financial planning are so important. Copies of the brochures are available by completing the coupon in this issue of the Bulletin.

Pension Community Consults on Revised Annual Information Return

LAST FALL, the Superintendent requested a PCO task force to redraft the Annual Information Return. The task force was instructed to focus its efforts on creating a comprehensive AIR form with supplementary Schedules, preparing guidelines to assist Administrators, and improving the efficiency of internal processing.

The new comprehensive AIR will disclose:

- basic information about the plan (member-

ship, contribution payments etc.);

- actuarial information, including contributions, surplus or deficiencies (excerpted from actuarial reports or cost certificates, to be contained in a supplemental Schedule); and
- financial information about the plan's investments and changes to the net asset position over the year (excerpted from financial statements, to be contained in a supplemental Schedule).

Basic Information About the Plan

In December, input was solicited from pension plan sponsors, consulting firms and professional associations as well as the Legal and Actuarial Advisory Committees concerning the initial aspect of the new AIR: basic information about the plan. We recently received feedback and suggestions from selected professionals representing all sectors of the pension community.

Individuals who participated in the consultation process devoted a substantial amount of time to evaluating the draft material. A number of professionals in the consulting community canvassed their colleagues concerned with pension matters in the firm to gather their ideas. Some requested meetings with PCO staff to review and discuss ideas.

Results of the consultation have been gathered and studied; the task force has incorporated most of them and produced a final form. The consultation group accepted the new streamlined version. The following comment reflects the general remarks echoed by all consulted:

...the form is a great improvement over the old format and will be much more useful...

Comments were submitted generally along the lines of format, terminology and content.

From the standpoint of format, most respondents noted that too little space was provided in the existing two page AIR. To accommodate the request for additional space, the form has been expanded to four pages.

Only essential information, applicable and common to all pension plans is collected on the new form. Supplemental information, specific to pension plans by "type of plan" will be gathered by way of Schedules in much the same way as personal information is collected when preparing an Income Tax Return. In this way, each plan will receive a customized AIR: they will receive the revised AIR form with Schedules that apply specifically to the plan. This applies to all Schedules except the proposed Schedule E that deals with financial reporting. The proposal is that all plans will be required to file it.

Many comments related to technical wording:

Make a distinction between the pension plan Administrator and the pension fund Administrator; consider calling the pension fund Administrator the Pension Fund Custodian.

Others were concerned about the type of information collected and space:

Change male/female membership information requested in the past to unisex member information; and

Allow sufficient space for multiple pension fund Custodians.

At the outset, the task force was asked to set an ambitious and aggressive timetable for itself. Consultation on the project to date has proved to be very beneficial bringing the pension community and regulatory authorities together to create a document acceptable to a majority of those affected.

It is hoped that the comprehensive AIR project and supplementary Schedules will be completed this spring and produced for mailing to pension plans early this summer.

The New AIR - Supplementary Schedule E for Financial Reporting

PCO staff have developed a supplementary Schedule to the new AIR to address the requirement for reporting financial information about the plan's investments and changes in net assets that occurred during the preceding year. In the same way as for the "basic information about the plan" part of the AIR, Schedule E has been circulated for public comment.

Administrators will be required to disclose the financial information annually. These requirements are being proposed as a filing requirement for all plans registered in Ontario. Basically, Schedule E consists of information required to be disclosed in financial statements as found in section 72 of the Regulation.

There are sound reasons for this proposal. The Schedule is considered to be beneficial to plan members, Administrators and regulators alike:

- as a replacement for prescribed unaudited financial statements, Schedule E will help alleviate the difficulties encountered by smaller plans in preparing financial statements (as evidenced by a sample review of financial statements filed as described in the December 1990 Bulletin);
- Administrators will have essential financial information concerning their plan's investments;
- Administrators will have this financial information readily available for disclosure to plan members;
- Schedule E provides important information

to the PCO in an easily processed format (essential in view of the large number of registered plans and the PCO's monitoring role); and

- Schedule E provides an important base of statistical information to be used for policy development purposes and for availability to the Government and the public (hitherto such information has been unavailable).

It is proposed that smaller plans currently filing unaudited financial statements, be required to file Schedule E only; Schedule E is intended to replace the requirement for unaudited financial statements.

We have approached over fifty professionals and other participants in the pension community who were consulted previously on the first part of the new AIR in December to review and comment on the proposed Schedule E. If you have any questions, please direct your enquiry to Larry Falconer, Jules Huot or Greg Shields at (416) 963-0522. Results of the consultation will be published in a future Bulletin.

Schedule E and the Accounting and Auditing Regulations

The development of Schedule E is part of a thorough exercise to address reporting, auditing and filing issues concerning financial reporting by pension plans. The current requirements under the PBA, 1987 and Regulation, dealing with the content and auditing of financial statements, are undergoing review in the context of:

- the CICA Handbook Guideline 4100 that deals with accounting for pension plans;
- the information needs of various interest groups;
- audit issues relating to plan records and operation, as well as pooled fund and segregated fund investments; and
- the means by which Administrators are able to fulfil their responsibility for compliance.

Changes will be proposed to the accounting and auditing regulations to conform to the proposed use of Schedule E and to address the foregoing issues.

Commonly Asked Questions

Q. What is the difference between a regulatory form and a Superintendent's form?

A. A regulatory form is prescribed by the PBA, 1987 and may only be created or amended by a change in the Regulation. Examples of regula-

tory forms are the Application for Registration, the AIR and the Spousal Waivers. Superintendent's forms are created or amended under section 99 of the PBA, 1987 whereby the Superintendent has the power to require that information be submitted in order to determine regulatory compliance.

Q. What is the difference between a void plan amendment and an adverse plan amendment?

- A. A void plan amendment is one which would reduce the amount or commuted value of the pension benefit accrued before the effective date of the amendments or would reduce the amount or commuted value of an ancillary benefit for which the member has already met all eligibility requirements. Such an amendment will not be registered by the PCO.

An adverse amendment is one which reduces future benefits or otherwise adversely affects right or obligations of members, former members or certain others. Examples of adverse amendments are reducing a defined benefit formula for future benefits or providing for the payment of administrative expenses by the plan instead of by the sponsor. Adverse amendments will be registered provided that notice is given to all affected parties.

Administrators are cautioned that the courts have tended to consider pension plans as trusts for the benefit of the plan members. Accordingly, it is important to seek legal advice where amendments that purport to confer surplus to the employer, to permit contribution holidays that were previously prohibited by the plan, or to alter the process of plan amendment, are contemplated.

Q. What is the PCO's policy concerning the crediting of interest on employee contributions?

- A. Subsection 12(2) of the Regulation provides that a plan must credit interest, not less frequently than annually, with either the fund rate or the five-year personal fixed term deposit rate (this rate is the chartered bank deposit rate, and is published in the monthly Bank of Canada Review). However, the pension plan must select which method is to be used and apply it consistently. The method selected can only be changed by a plan amendment.

Q. Can an average fund rate be used when crediting interest on employee contributions?

- A. Yes, an average fund rate can be used provided that the averaging period is no more than 5 years.

Q. Can the fund set a minimum and maximum

interest rate when crediting interest on employee contributions?

- A. Yes, the fund can set a minimum interest rate. However, setting a maximum interest rate is not permitted.

Q. Can a person who is leaving the country permanently unlock pension funds?

- A. No. Pension funds must remain locked-in regardless of whether or not the former member is leaving the country. However, the various regulatory authorities have recommended that this provision should be reviewed.

Q. What information must Administrators provide to members, and how often?

- A. An explanation of the provisions of the pension plan, the person's rights and obligations under the plan, and notice and explanation of plan amendments must be provided to all plan members, or prospective plan members. For a new plan, this information must be given to current members within 60 days after the establishment of the plan. For an existing plan with an eligibility period, the information must be given to prospective members within sixty days prior to the date on which the person will be eligible to join the plan. For an existing plan without an eligibility period the information must be provided within sixty days after the person commences employment.

Each member must also receive annually a written statement containing prescribed information about the pension plan, the member's pension benefits and any ancillary benefits. The prescribed information to be included in the annual statements is detailed in subsection 36 of the Regulation.

On termination of membership, the Administrator must provide a termination statement. Further details on the time requirements for the various kinds of termination statements can be found in Commonly Asked Questions, Volume 1, Issue 2.

Q. Can the above information be obtained by someone other than the plan member?

- A. Section 30 of the PBA, 1987 specifies that prescribed pension plan documents are available to plan members, former members, spouses of either, other persons entitled to benefits under the plan, and a representative of a trade union or an agent representing any of the previous parties.

If persons not related to the pension plan wish to obtain pension plan documents, they must follow a request process under the Freedom of Information and Protection of Privacy Act.

Q. What information must be provided to

members on written request to the Administrator under sections 30 and 31 of the PBA, 1987?

A. Section 41 of the Regulation specifies what information must be provided by an Administrator on written request by a member. When necessary, this information can be obtained from the PCO after making a prior appointment and producing sufficient identification. The following information is available:

- current plan text and amendments;
- documents which create or amend the current or previous plan under subsection 9(2) or 12(2) of the PBA, 1987;
- provisions of any previous plan if the current plan is a successor;
- documents which set out employer responsibilities or delegate administration of the plan or fund;
- annual information returns filed;
- financial statements or reports that are filed;
- correspondence between the Commission and the Administrator within the previous five years;
- applicable parts of a purchase and sale agreement that relate to the pension plan; and
- statement of investment policies and goals;

The Administrator has thirty days to comply with the written request and may charge for copying of any documents. A person making a request is not entitled to see personal information on any plan member but himself.

Q. How long must pension plan records be retained by the Administrator?

A. Neither the PBA, 1987 nor Regulation currently prescribe the period of time for which pension records must be retained by the Administrator. General records management principles should apply to all record keeping. Because of the nature of pension plans - the lengthy time periods involved, potential difficulties of surplus allocation in ongoing or wound-up plans and the requirement to provide information to pension plan members - Administrators of defined benefit plans should generally maintain records for the life of the plan.

Q. What is normal retirement date?

A. Normal retirement date is specified in the pension plan text. However, it cannot be later than age 66 as specified in subsection 36(1) of the PBA, 1987.

Q. How does the recent Supreme Court decision on mandatory retirement affect pension plans in Ontario?

A. The recent Supreme Court decision on manda-

tory retirement does not have any effect on the PBA, 1987. The PBA, 1987 does not prescribe a mandatory retirement date. It does, however, provide under subsections 36(3) and (4) that a member who works past the normal retirement date may continue membership and benefit accrual.

Q. What is a bridge benefit?

A. A bridge benefit is a benefit provided by some pension plans to those members who retire prior to normal retirement date. It is a benefit which supplements the former member's pension benefit until the former member becomes eligible for government pensions, normally at age 65.

Mandatory Retirement: The Pension Perspective

A RECENT SUPREME

Court of Canada majority decision upholding the constitutionality of mandatory retirement has focussed the attention of employees and employers on retirement and pension issues.

Interestingly, the decision has no direct impact on current provincial pension legislation; however, it may influence future policy making from the standpoint that people should be able to retire with an adequate income. This is an especially important topic in relation to women and the nature of their employment.

The PBA, 1987 is clear. It does not specify mandatory retirement at a fixed age. Normal Retirement Age is defined in section 36 of the PBA, 1987 as no later than age 66. However, this provision is intended to facilitate early and normal retirement with pensions; it is not a requirement that a member must retire. Rather, it gives the member the right to receive a pension at age 65, if the member so chooses.

The vast majority of pension plans in Ontario will allow postponed retirement at the employee's option; only a handful of plans specifically prohibit postponed retirement. No data is available on how many members remain employed after age 66.

Section 42 of the PBA, 1987 does mandate an early retirement age. A pension plan member is allowed to take early retirement up to ten years prior to Normal Retirement Age. However, the amount of pension received would be actuarially reduced based on the number of years the member retired before Normal Retirement Age.

The Canada Pension Plan (CPP) has a similar provision. It permits someone age 60 or older to receive payments. For each month prior to age 65



that payments were received, they would be reduced by 1/2 a percent per month. (For example, if a person decided to retire at age 60, five years, or 60 months prior to age 65, this would result in a 30 per cent reduction in monthly payments.)

A pension plan is permitted under the PBA, 1987 to establish a maximum number of years of service and a maximum amount that can be paid by a pension plan. These provisions, set out in subsection 36(4), allow a plan to set limits in accordance with the limitations that are specified in Revenue Canada's Income Tax Act.

The former Income Tax Act set a limit of 35 years on membership. The new Act has removed this 35 year service provision in keeping with its new "maximum annual accrual" approach. The effect is that a member may remain in the plan indefinitely. Other recent amendments to the Act place a limit on tax-assisted savings of 18 per cent of an individual's earnings. This limit applies to contributions by both the individual and the employer. It also caps the total of contributions to all types of registered savings plans including employer-sponsored pension plans and Registered Retirement Savings Plans (RRSPs). Furthermore, members in a defined benefit plan will be subject to additional reduction of available room for their RRSP contributions.

Women face greatest hardship

The segment of workers most affected by mandatory retirement are women and workers not covered by employer-sponsored pension plans. Workers with no such plans may be forced to retire with only the basic Old Age Security and Canada Pension Plan coverage.

In 1988 one in four, or 25 per cent, of elderly women in Canada were poor. For single elderly women the incidence of poverty was 46 per cent.

Many working women qualify for very small Canada Pension Plan benefits or none at all. This is because CPP is an earnings-related program and homemakers and other women who are not in the paid labour force do not qualify for benefits.

Part-time and very low income earners, primarily women, who are required to save for retirement by contributing to the CPP, may be disqualified from eligibility for assistance under the federal Guaranteed Income Supplement and/or Ontario's Guaranteed Annual Income Supplement leaving them no better off than people who have not saved for their retirement years.

CPP offers survivor benefits for widowed spouses who are 65 or older. These are usually women because women in Ontario live an average of 80 years while men live an average of 73 years. However, these benefits are only 60 per cent of the pension benefit paid to the member spouse. This may mean a very low income for women whose husbands were low earners. While divorced women

can claim half of the pension credits accrued during the marriage, benefits are not paid until the women reaches age 65 and no survivor benefits are paid if the ex-spouse dies.

While the federal Spouse's Allowance program provides assistance to the non-earning spouse in low income families, no similar supplement exists to address poverty among single women.

Immigrants who have been in Canada for fewer than 10 years are not eligible for federal Old Age Security (OAS) benefits. Those who have been in Canada for more than 10 years but less than 40 years receive 1/40th of the OAS pension for every year spent in Canada. As a result of these residency requirements, older immigrant women who have been sponsored by their families, in part to assist with child care, may not qualify for OAS benefits, but would receive Guaranteed Income Supplement. Immigrants may be working in jobs that are not covered by employer-sponsored pension plans.

The Pension Commission of Ontario is working on a multicultural project to promote the importance of retirement planning to ethno cultural communities. This pilot project is initially targeting the four largest ethnocultural groups in Ontario: the Italian, Chinese, Greek and Portuguese communities.

Women in Employer-Sponsored Pensions

Only 38 per cent of women in paid employment are covered by employer-sponsored pensions. The comparable figure for men is 46 per cent. This is owing to several factors, including:

- fewer women are covered by collective agreements;
- in 1989, 44 per cent of working women on Ontario earned less than \$20,000 a year. Workers with incomes below \$20,000 are less likely to have employment pension;
- one quarter of all working women in Ontario are employed in part-time jobs;
- despite reforms introduced in the PBA, 1987, coverage for part-time workers is low; and
- most small firms with fewer than 100 employees do not provide employer-sponsored pensions. Women tend to be employed in smaller establishments, particularly in the service sector.

However, even women who are covered by employer-sponsored pension plans are not assured an adequate retirement income. This is because retirement benefits are based on earnings. In 1989, women working full-time earned an average of \$25,205 or 67.4 per cent of average earnings of male full-time workers. Nationally, the female to male earnings ratio for those who had been with their current employer less than one year was not

significantly different from the ratio of those with more than 20 years tenure.

The PBA, 1987 introduced a series of reforms that benefit women in Ontario who have employer-sponsored pension plans. These include membership eligibility for part-time workers and earlier plan membership, vesting and locking-in of benefits for full-time workers. In addition, women benefit from the delayed retirement provisions and the division of pension credits on marriage breakdown.

Although these reforms are and will continue to be beneficial to women, the following issues still remain:

- if a non-member spouse is living separate and apart from the member spouse when that member dies or retires, the non-member spouse may lose entitlement to the spousal pension;
- women's lower retirement income is further eroded by inflation. Indexation would provide some protection of purchasing power.

Confronted with the spectre of an aging society, these issues become more pressing. A great deal of study and analysis will continue to take place in order to resolve some of the current gaps in pension security for all Ontarians.

Protecting Pensions: The Pension Benefits Guarantee Fund

THE PBGF was established in 1980 to guarantee a minimum level of coverage for certain benefits provided by a defined benefit pension plan in the event of a plan wind up. Benefits are paid from the Fund when there are unfunded liabilities and the plan sponsor is insolvent. The PBGF is the only fund of this type in Canada. By securing the pension benefits for members of defined benefit pension plans in Ontario, the PBGF assures a fundamental principle of protection. However, it faces difficult funding problems.

Coverage

The PBGF covers the following key pension benefits, as set out in section 85 of the PBA, 1987:

- any pension in pay in respect of employment in Ontario;
- pre-1987 deferred vested pension benefits;
- a percentage of post-1986 deferred vested pension benefits;
- additional voluntary contributions plus interest;

- all employee contributions plus interest;
- bridging benefits for members with at least 10 years of service;
- former spouse's entitlement under a court order or agreement to a deferred pension; and
- pre-retirement death benefits.

Funding

The PBGF is financed by assessments on sponsors of defined benefit plans. There are two forms of levy:

- 1) on all defined benefit plans in the amount of \$1 per Ontario plan member; and
- 2) on those plans with deficiencies in the amount of 0.2% of a plan's solvency deficiency.

Individual coverage is limited to a monthly maximum of \$1,000 plus a proportion of benefits included in the calculation of the wind-up liability. However, certain pension benefits are excluded from coverage.

History, Status and Future Prospects

Since its inception in 1980, the total payout (as of January 31, 1991) on claims arising against the Fund was almost \$41 million. Between 1980 and 1987, there were sufficient assets in the PBGF to meet all claims and by the beginning of fiscal 1988, assets in the Fund totalled almost \$7 million. However, the demise of Massey Combines in that year resulted in a claim against the Fund of approximately \$31 million. (In the event there are insufficient monies in the Fund to pay out claims, the Fund may arrange for a loan from the Consolidated Revenue Fund of the Government of Ontario.)

While Massey Combines was in receivership, the Superintendent appointed a third party Administrator to manage the affairs of the pension plan. The assets in the plan together with \$22 million (loaned from the Consolidated Revenue Fund to the PBGF) were used to provide for the pension benefits of plan members.

The failure of Massey Combines and the inadequacy of its pension assets to meet the pension promise to plan members placed a great strain on the PBGF leaving it in a deficit position and greatly increasing the Fund's potential exposure in the present recessionary period.

It is apparent that the status of the PBGF is insufficient to cover the claims of existing and prospective claims against it. The Government and staff of the PCO are concerned and are seeking solutions to deal with the immediate and long-term funding requirements.

The PBGF has been and continues to be scrutinized carefully. However, there appears to be no doubt as to the principle of pension benefit protection and therefore the Fund's continuing existence.





Decisions

IN THE MATTER OF the Pension Benefits Act, 1987, S.O. 1987, c.35 (the "Act");

AND IN THE MATTER OF the Notice of Proposal to Make an Order made by the Superintendent of Pensions for Ontario (the "Superintendent") under section 88 of the Act in respect of the General Motors Canadian Hourly-Rated Employees' Pension Plan (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 90(8) of the Act.

Before:

Eileen Gillese, Chair
and Board members M. Joseph Regan, Deborah Hanscom,
Glenn Pattinson and David Stouffer

Counsel for the Pension

Commission of Ontario:

John C. Murray

**Counsel for General Motors
of Canada Limited:**

Ian McSweeney and Frederick L. Myers

**Counsel for Karl Zimmermann,
Albert Taylor, Joseph McCloskey,
Ernest J. Percy, James Hughes
and Local 222 of the National
Automobile Aerospace and
Agricultural Implement Workers'
Union of Canada and its Members
and Retirees:**

Susan Rowland and Donald J.M. Brown, Q.C.

Counsel for CAW-Canada:

Lewis Gottheil

**Counsel for the Superintendent
of Pensions:**

Katherine Catton

Hearing on the Issue of Standing held November 1, 1990, Toronto, Ontario.

FACTS

The Plan is a non-contributory defined benefit pension plan which covers approximately 39,300 hourly-rated employees. The National Automobile, Aerospace and Agricultural Implement Workers Union of Canada ("CAW-Canada") (and its locals 222, 1163, 199, 303, 27 and 637) is the exclusive bargaining agent for the employees. Approximately 18,000 employees and several thousand retirees are members of Local 222 of CAW-Canada (the "Local Union"). Both the Local Union and CAW-Canada are parties to the Plan. General Motors of Canada Limited (the "Applicant") is the Trustee and Administrator of the Plan and its assets and has been since the plan's inception in 1950.

The Act and Ontario Regulation 708/87, as amended, (the "Regulation") required the Applicant to file an actuarial valuation by August 31, 1988. The Applicant was granted extensions of time within which to file the report; however, on April 4, 1990, the Superintendent issued and served a Notice of Proposal to make an Order under section 88 of the Act requiring the Applicant to prepare and file an actuarial report for the Plan with a review date of no later than December 1, 1988. The Applicant then delivered a written demand for a hearing before the Pension Commission of Ontario (the "Commission") pursuant to subsection 90(6) of the Act. The CAW-Canada sought standing before the Commission as did the Local Union. The application by the Local Union was brought also in the name of Karl Zimmermann, an hourly employee and a member of the CAW-Canada, and four named retirees of the Local Union. Written notice of the hearing was given to the other locals but written representations were received only from the Applicant, CAW-Canada and the Local Union on its own behalf as well as that of the named hourly employee and retirees.

On November 1, 1990, a five member panel of the Commission heard oral submissions on the issue of standing. At that time, the hourly employee, Karl Zimmermann, withdrew his application for standing. Counsel for the Local Union advised that in the event it were granted standing and if it were allowed to make representations on behalf of retirees as well as active members of the Local Union, then that portion of the

application relating to the four named retirees would be withdrawn as well.

After deliberation, the Commission orally held that both the CAW-Canada and the Local Union had standing in the matter and that counsel for the Local Union would be allowed to make representations on behalf of retirees. The application was then withdrawn on behalf of the four named retirees. As a result, the following reasons do not address the issue of standing as it relates to retirees. It is to be noted, however, that the Commission has not and is not passing on whether a union has the right to represent retirees interests in matters before it.

ISSUE

Thus, the issue before the Commission was whether either or both of the CAW-Canada or the Local Union should be granted standing in the hearing before it.

LAW

The Act

Under subsection 90(11) of the Act:

“The Superintendent, the person who requires a hearing **and such other persons as the Commission specifies** are parties to the proceeding before the Commission under this section.” (emphasis added)

In the Commission's view, subsection 90(11) confers upon it the discretion to determine what persons, other than the Superintendent and the Applicant, are entitled to be a party to a hearing. This discretion is not unfettered. It must be guided by factors such as the nature of the matters in issue, whether the party requesting standing has a genuine interest in the issue, whether there are other reasonable and effective methods by which the concerns of those seeking standing can be addressed and whether the addition of parties will prejudice the Applicant or the functioning of the tribunal. (See Minister of Finance of Canada v. Finlay (1986), 33 DLR (4th) 321. SCC and Ontario Nurses' Association Women's College Hospital (1989), 1 PER.53).

In the circumstances, there is no question but that the matter in issue is a serious and justifiable one. The preparation of an actuarial valuation is critical not only to the maintenance of the regulatory scheme set up by the Act but also to ensure that plan members and regulators can monitor the pension plan funding process to ensure that all members and beneficiaries of a plan are protected.

The next factor for consideration is whether the CAW-Canada and the Local Union have a genuine interest in the matters in issue. As actuarial valuations are intended to ensure that pension plans are and remain properly funded, it is clear that the employees have a direct interest in the proposed proceedings.

CAW-Canada, as a party to the Plan, is entrusted with the responsibility of administering the pension agreement and ensuring that all obligations referred to in the pension agreement and the Plan are met by the Applicant. Not only by law but by the terms of the Plan itself, the CAW-Canada is required to fairly represent the interest of the employees who, as noted, have a direct and clear interest in the issue of solvency of the Plan as raised by the Notice of Proposal. Moreover, the CAW-Canada has a legal obligation to represent the employees' interests in these issues. As the collective bargaining agent for the hourly-rated employees and members of the Plan, and for the reasons given, it seems manifestly appropriate that the CAW-Canada be granted standing.

The Local Union is also a party to the Plan; it represents a significant number of Plan members who are beneficiaries of the trust and who have a genuine interest in the issue of the Plan solvency. As a result, it again seems appropriate that it be granted standing.

However, before deciding finally whether to grant standing to the CAW-Canada and the Local Union, due consideration must be given to the third and fourth factors. The third is whether there are other reasonable and effective methods by which the concerns of the CAW-Canada and the Local Union can be addressed. As the filing of actuarial valuations is a matter governed by the Superintendent and the Commission and not by the courts, there is no other forum in which these parties can bring forward their concerns. Absent a forum, it is hard to envisage any reasonable method by which they can make their concerns known. No suggestion has been made that the unions be restricted in their participation in the hearing and rightly so. Restrictions on participation - such as written representations alone - would unduly hamper the unions in presentation of their views. It would also detract from the Commission's processes as the Commission will benefit from the insights that a party "adversarial" in nature will bring. Finally, once a party is granted standing as a general rule it will be granted the same procedural rights as other parties.

We are not unmindful of the concerns raised by the Applicant in this matter. The essence of those concerns is contained in paragraph 32 of the Applicant's submission.

"It is submitted that in considering whether to grant standing, especially in a case which involves issues of statutory interpretation as opposed to narrow questions of disputed facts between private parties, the tribunal ought to consider the needs of its own process to ensure that its public duties are carried out in the interests of justice and for the enhancement of the goals in the regulatory system. The effectiveness and efficiency of the tribunal's process should not be impaired, nor should GMCL [the Applicant] be unfairly prejudiced by the unnecessary participation of parties such as those whose concerns are properly represented by the participation in the hearing by the CAW, National Union."

The concern that granting standing to the CAW-Canada and the Local Union would add delay, widen issues or increase costs to the Applicant is covered by the fourth factor which the Commission considered in coming to its decision. The Commission feels confident that procedural rulings will enable it to deal with such problems, if and when they arise. While some additional hearing time may be involved, it must be remembered that the overall obligation of the Commission is to ensure that it has the best possible evidence and argument before it. To do this, the voices of those parties directly affected by its decision should be heard. Rather than detracting from the decision-making process, hearing from the different parties should enhance the effectiveness and the efficiency of the Commission decision-making process.

Finally, we are ever mindful of the obligation that the courts have recognized when in calling the Commission a "fiduciary". It is difficult to conceive of how the Commission could carry out its fiduciary obligation to plan members if it denied them the right to participate in a hearing on a matter as fundamental to their rights as this. Their voices are heard through their representative bodies, the CAW-Canada and the Local Union.

Statutory Powers Procedure Act

While we are of the view that subsection 90(11) of the Act empowers us to determine the parties to a hearing, we find that the Statutory Powers Procedure Act, R.S.O. 1980, c.484, (the "SPPA") similarly confers such a discretion.

The Commission is a tribunal within the meaning of the SPPA. Moreover, subsection 90(9) of the Act requires it to exercise a statutory power of decision:

"At or after the hearing, the Commission by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Commission considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes, the Commission may substitute its opinion for that of the Superintendent."

Section 5 of the SPPA provides that:

"Parties to any proceeding shall be the persons specified as parties by or under the statute under which the proceedings arise or, if not so specified, persons entitled by law to be parties to the proceedings."

"Persons entitled by law to be parties to the proceedings" has been considered and found to include persons whose interests may be directly and adversely affected by an adjudication. (See Ontario Hydro [1978] OLRB Rep. 304 and R.V. Ontario Labour Relations Board ex parte Northern Electric Company Limited (1970), 14 DLR (3D) 537 Ontario CA).

A trade union is a "person" for the purposes of the SPPA (see subsection 1(2)). Therefore, for the reasons previously given the CAW-Canada and the Local Union on behalf of Plan members are "persons entitled by law to be parties to the proceedings".

CONCLUSION

Standing is granted to both the CAW-Canada and the Local Union.

Dated at Toronto this 25th day of January, 1991

On behalf of:

E. Gillese, Chair
M.J. Regan
D. Hanscom
G. Pattinson
D. Stouffer

*Commission Decisions - Applications
Approved Since November, 1990*

*Applications Approved Under Clause 7a(2)(c) of
the Regulation and Subsection 79(1) of the PBA,
1987 - Request for Return of Surplus Pursuant to
a Court Order*

At the Commission meeting held November 22, 1990, the Commission consented to filing with the court a consent pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(c) of the Regulation to the refund of plan surplus.

**a) Walter E. Heller Financial Corporation
Employee Retirement Plan (C-24839)**

Refund of plan surplus amounting to \$1,290,529 plus the applicable interest adjustment to the date of distribution to the employer.

At the Commission meeting held February 21, 1991, the Commission consented to filing with the court a consent pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(c) of the Regulation to the refund of plan surplus.

a) The Contributory Pension Plan for Salaried Employees of Ivaco Inc. (C-10765)

Refund of plan surplus amounting to \$1,754,433 as at September 18, 1987 plus investment earnings to the date of distribution to the employer.

Applications Approved Under Clause 7a(2)(b) of the Regulation and Subsection 79(1) of the PBA, 1987 - Surplus Withdrawal on Wind Up

At the Commission meeting held November 22, 1990, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

a) Sklar-Pepler Furniture Inc. Plan for Group "A" Employees (C-15209)

Refund of plan surplus amounting to \$100,550 plus accrued interest to the date of distribution to the company.

At the Commission meeting held December 20, 1990, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

a) Burns Fry Limited (C-101632)

Refund of plan surplus amounting to \$89,472 plus interest to the employer.

b) Burns Fry Limited (C-100976)

Refund of plan surplus amounting to \$25,882 plus interest to the employer.

c) Burns Fry Limited (C-101633)

Refund of plan surplus amounting to \$53,912 plus interest to the employer.

d) The Retirement Plan for Employees of Lumonics Inc. (C-12773)

Refund of plan surplus amounting to \$353,000 plus the applicable interest adjustment to the date of distribution to the employer.

At the Commission meeting held January 24, 1991, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

a) The Retirement Benefit Plan for the Employees of Bruce Edmeades Sales Limited (C-15536)

Refund of plan surplus amounting to \$154,800 as at July 10, 1989 plus investment earnings to the date of payment to the employer.

b) Burns Fry Limited (C-100604)

Refund of plan surplus amounting to \$28,836 plus interest to the employer.

c) Burns Fry Limited (C-100609)

Refund of plan surplus amounting to \$76,544 plus interest to the employer.

d) Pension Plan for Designated and Senior Salaried Employees of Canteen of Canada Limited (C-13643)

Refund of plan surplus amounting to \$1,640,809 as at July 1, 1990 plus investment earnings to the date of payment to the employer.

Applications Approved under Clause 7a(2)(b) of the Regulation and under Subsections 79(1) and 64(8) of the PBA, 1987 - Surplus Withdrawal on Wind Up and Request for Return of Member Contributions

At the Commission meeting held December 20, 1990, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus and pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

a) Burns Fry Limited (C-100975)

Refund of plan surplus amounting to \$344,027 plus interest to the employer and refund of member required contributions in the amount of \$150,853 plus interest to the date of distribution.

b) Burns Fry Limited (C-100982)

Refund of plan surplus amounting to \$260,104 plus interest to the employer and refund of member required contributions in the amount of \$98,049 plus interest to date of distribution.

At the Commission meeting held January 24, 1991, the Commission consented pursuant to sub-

section 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus and pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

a) Burns Fry Limited (C-100583)

Refund of plan surplus amounting to \$177,562 plus interest to the employer and refund of member required contributions in the amount of \$34,099 plus interest to the date of distribution.

b) Burns Fry Limited (C-100585)

Refund of plan surplus amounting to \$321,150 plus interest to the employer and refund of member required contributions in the amount of \$152,688 plus interest to date of distribution.

c) Burns Fry Limited (C-100612)

Refund of plan surplus amounting to \$217,027 plus interest to the employer and refund of member required contributions in the amount of \$47,244 plus interest to date of distribution.

d) Burns Fry Limited (C-100970)

Refund of plan surplus amounting to \$355,917 plus interest to the employer and refund of member required contributions in the amount of \$211,142 plus interest to date of distribution.

At the Commission meeting held February 21, 1991, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and Regulation 7a(2)(b) thereunder to the refund of plan surplus plus interest to the employer, as applicable to each individual pension plan as follows on the understanding that an amount equal to the refund has or will be paid to the members by the employer in compliance with subsection vi(b) of the Compensation Agreement; and pursuant to subsection 64(8) of the PBA, 1987 for the refund of member required contributions plus interest to date of distribution, as applicable to each individual pension plan as follows:

a) Burns Fry Limited -

18 Sole Member Pension Plans

Registration Application
for Commission's Consent

Number	79(1)	64(8)
C-100469	\$199,723	\$ 68,525
C-100581	75,651	—
C-100589	19,715	—
C-100595	80,148	—
C-100597	80,990	34,056
C-100605	148,010	93,931

C-100610	33,058	—
C-100613	29,825	—
C-100826	106,928	24,600
C-100828	139,688	141,789
C-100830	67,693	—
C-100958	40,736	—
C-100964	95,327	6,314
C-100981	331,883	207,625
C-100984	150,344	52,025
C-100986	129,809	27,308
C-100987	89,695	—
C-101891	37,690	37,038

Applications Approved under Subsection 64(8) of the PBA, 1987 - Requests for Return of Member Contributions

At the Commission meeting held December 20, 1990, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

a) Burns Fry Limited (C-100959)

Refund of member required contributions in the amount of \$204,216 plus interest to date of distribution.

b) Burns Fry Limited (C-100829)

Refund of member required contributions in the amount of \$70,109 plus interest to date of distribution.

At the Commission meeting held February 21, 1991, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

a) KSR Industrial Corporation Pension Plan for Employees (C-1811)

Refund of member required contributions in the amount of \$64,000 as at July 1, 1990 plus credited interest to the date of payment.

b) Davis Gelatine (Canada) Limited Employees' Pension Plan (C-6253)

Refund of member required contributions in the amount of \$46,692 as at January 1, 1991 and a further refund of member required contributions in the amount of \$46,692 as at July 1, 1991, provided that no refund will take place unless evidence is received by the Superintendent of Pensions that the employer has first deposited into the pension funds amounts equal to the refunds.

Commission Notice of Proposal to Refuse Consent

On December 27, 1990, the Commission, pursuant to section 91 of the PBA, 1987, issued a Notice of

Proposal to Refuse Consent to a refund of contributions under section 64 of the PBA, 1987.

a) Davis Gelatine (Canada) Limited Employees' Pension Plan (C-6253)

This application to the Commission requesting Commission consent to a refund of contributions pursuant to subsection 64(8) of the PBA, 1987 was withdrawn by the employer.

Application Approved Under Section 106 of the PBA, 1987 - Request for Extension of Time for Filing Actuarial Report

At the Commission meeting held February 21, 1991, the Commission, pursuant to section 106 of the PBA, 1987, consented to an extension of time to April 30, 1991, for the Ontario Teachers' Pension Plan Board to file their actuarial report.

Superintendent's Decisions

Notices of Proposal to Make an Order

The Superintendent issued a Notice of Proposal to Make an Order under subsection 90(2) [Notice of Proposal to Make an Order] of the PBA, 1987 dated November 7, 1990 for the following pension plan:

- a) Cluett, Peabody & Company Canada, Limited Employee Retirement Plan (Van Raalte Division) (C-7208)

The Superintendent issued a Notice of Proposal to Make an Order under subsection 90(5) [Notice of Proposed Wind Up Order] of the PBA, 1987 dated January 22, 1991 for the following pension plans:

- a) Leigh Instruments Limited Employees' Pension Plan (C-9040).
b) Frequency Control Division of Leigh Instruments Limited Employees' Pension Plan (C-530).

Appointment of Administrators

PURSUANT TO SECTION

72 of the PBA, 1987, the Superintendent of Pensions has appointed Administrators to wind up the pension plan(s) of the following companies. These Administrators were appointed owing to the insolvency of the companies.

The Superintendent will appoint outside Administrators from an established roster where the matters are complex or there are a large number of pension plan members involved.

Company	Administrator	Date of Appointment
Amlin Cartage Limited	Superintendent of Pensions	02/28/91
Warren K. Cook Limited	Superintendent of Pensions	02/28/91

Proceedings Before the Commission

Requests for Hearings

a) Hospitals of Ontario Pension Plan ("HOOPP")

At a preliminary hearing held October 11, 1990, the Commission ruled it had jurisdiction to require a hearing resulting from the Superintendent's refusal to make an order pursuant to section 88 of the PBA, 1987 to compel the Ontario Hospital Association to comply with clause 8(1)(e). The reasons for this decision were released November 22, 1990 and published in the December 1990 issue of the PCO Bulletin. A motion to quash an appeal of the November 22, 1990 Commission decision was granted by the Ontario Court (General Division) Divisional Court. The Commission hearing on the substantive issues will be held April 19, 1991.

b) General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

The preliminary hearing on standing was held on November 1, 1990, and a pre-hearing conference was held January 25, 1991. The hearing on the substantive issues will be held April 8 - 11 and April 16 - 18, 1991.

c) American Federation of Musicians' and Employers' Pension Welfare Fund (Canada)

A request for a hearing resulting from a Notice of Proposal to make an Order pursuant to section 88 of the PBA, 1987 issued by the Superintendent of Pensions. The hearing has been rescheduled to March 7, 1991.

d) Cluett, Peabody & Company Canada, Limited Employee Retirement Plan (Van Raalte Division)

A request for a hearing resulting from a Notice of Proposal to make an Order pursuant to section 88 of the PBA, 1987 issued by the Superintendent of Pensions. This matter will be heard by the Commission March 21, 1991.

Commission decisions in these matters will be reported in future issues of the PCO Bulletin.

Reminders to Administrators

AIR Certification

Administrators must ensure that the Annual Information Return is signed. It may only be signed by:

- the Administrator;
- a member of the Pension Board; or
- a senior staff person designated by the Administrator.

Document Submissions

All documents submitted to the PCO should be provided on 8" x 11" paper.

This requirement is necessary to make the documents usable on the optical scanning equipment that the PCO will be utilizing in the future.

Have you moved?

We want you to receive information when you need it and to help you avoid costly late filing fees.

To do this we need to keep our mailing list up-to-date. You can help: please notify us as soon as your mailing information changes. Make sure your PCO mail is addressed to the right person at the right address.

Remember, Annual Information Returns are mailed using the last recorded address. If you do not receive your Return because you have moved, and your Return is subsequently filed late, you will be charged the applicable late filing fee.

Help us help you — keep us informed.

To update mailing information please write or fax:

PCO Data Control Section
101 Bloor Street West
9th Floor
Toronto, Ontario
M7A 2K2
FAX: (416) 972-5812

Contacts for PCO Enquiries

Actuarial	Teck Go	972-5799
Annual Information Returns	Rose Ann Drakes	972-5782
Communications	Judith Chalmers	972-5800
Financial Statements	Larry Falconer	972-5809
Freedom of Information Requests	Ken Doiron	972-5798
General Enquiry - Secretariat	Lynn Barron	972-5825
Policy Issues	Jerry Williams	972-5826
Mailing List	Lynn Barron	972-5825
PCO Bulletin/Compliance Assistance Guidelines	Judith Chalmers	972-5800
Pension Benefits Guarantee Fund (Administration)	Margaret Fennell	972-5785
Plan Registration - Forms		972-5784
Plan-specific Enquiry (state plan name and/or provincial registration no.)		963-0522
Registrar/Secretary to the Commission	Mary Crocker	972-5815
Statements of Investment Policies & Goals/Investment Policy Return	Jules Huot	972-5821

Note: Acronyms will be used throughout the PCO Bulletin and Compliance Assistance Guidelines to make the publications more readable.

AIR -	Annual Information Return	IPR -	Investment Policy Return
CAPSA -	Canadian Association of Pension Supervisory Authorities	MFI -	Ministry of Financial Institutions
CIA -	Canadian Institute of Actuaries	OSC -	Ontario Securities Commission
CICA -	Canadian Institute of Chartered Accountants	PBA, 1987 -	<i>Pension Benefits Act, 1987</i>
ISSG -	Information Systems Services Group	PCO -	Pension Commission of Ontario
FOIPOP -	Freedom of Information and Protection of Privacy	SIP&G -	Statement of Investment Policies and Goals

Are You On Our Mailing List?

Owing to mailing and production costs the PCO anticipates **not** sending future Bulletins and Compliance Assistance Guidelines to our mailing list of registered plans (you are on this list if the mailing label shows your plan's provincial registration number). **If you would like to be on our supplementary mailing list to continue to receive the PCO Bulletin and Compliance Assistance Guidelines please write, or fax at 972-5812, to Lynn Barron, or call directly at 972-5825.** If you have already responded to this request your name has been added to the Bulletin and Guidelines mailing list and you may disregard this notice.

Although every effort has been made to ensure the accuracy of the material contained in this publication, it is provided for information purposes only. Acts and regulations mentioned in this publication may be reviewed in most public libraries or obtained through Publications Services, Ministry of Government Services, 880 Bay Street, Toronto, Ontario M7A 1N8.

The PCO Bulletin is published quarterly by the Pension Commission of Ontario, 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2 (416) 963-0522 FAX (416) 972-5812. Articles may be quoted with acknowledgement.

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THE PENSION COMMISSION OF ONTARIO BULLETIN

July, 1991

Vol. 2, Issue 2

Brian Charlton Appointed Minister of Financial Institutions



Brian Charlton

ON MARCH 18, 1991 Premier Bob Rae announced the appointment of Brian Charlton, MPP for Hamilton Mountain riding to the Financial Institutions portfolio. As Minister, Mr. Charlton is responsible for deposit institutions, insurance including the review and development of auto insurance policy and the activities of the Ontario Securities Commission

and the Pension Commission of Ontario.

Before his appointment, Mr. Charlton was Parliamentary Assistant to the Minister of Energy. In opposition he was in turn, revenue critic, Deputy Caucus Whip and energy critic. As revenue critic, Mr. Charlton was a strong advocate for the establishment of a fair and equitable property tax system in Ontario, drawing on many years' experience as a property assessor with the Ontario public service before his election to the provincial legislature in 1977.

While a public servant, Mr. Charlton served as president of Local 202 of the Ontario Public Service Employees' Union and won the right for public servants to seek political office. Mr. Charlton has been actively involved in the New Democratic Party since its founding in 1961.

Mr. Charlton recently addressed the Financial Executives Institute at the National Club and spoke of his commitment to ensure the ability of people to live with dignity and economic security in retirement. Mr. Charlton said, "our Government's goal is to increase the number of people who are covered by pension plans and to improve the quality of coverage".

HIGHLIGHTS

Brian Charlton Appointed Minister of Financial Institutions

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Farewell Message of Robert H. Hawkes, Superintendent of Pensions



Robert H. Hawkes

ROBERT H. HAWKES, Q.C. was appointed Superintendent of Pensions in April, 1987 and guided the introduction and implementation of the PBA, 1987 until June 3, 1991. He joined the PCO after nearly thirty years with Rothmans Inc. first as General Counsel and Secretary and from 1972, as

President and Chief Executive Officer. During this period, Mr. Hawkes held directorships in several organizations. On graduation from Osgoode Hall Law School in 1955, Mr. Hawkes was with another Canadian consumer products company for three years and served as Assistant General Counsel before joining Rothmans.

Mr. Hawkes will be assuming a senior position with the Ontario Municipal Board.

What in your view is the PCO's essential role?

Building trust into the system is the fundamental issue for the regulators and that is the reason the PCO was established - to address the issue of funding. This is the major role the PCO can play in relation to protecting the retirement income of plan members. The hardships we have seen outside of Ontario where there is no Guarantee Fund have been dramatic and wrenching. These experiences have led to recommendations to improve funding and members' ability to understand the funded status of the plan.

The issue of funding remains paramount. Staff must monitor plan funding and the adequacy of actuarial assumptions and most importantly, ensure that members know where they stand.

How do members know where they stand personally?

Through the annual member statement. I am also of the view that members should be told the funded status of the pension plan on an annual or at least a triennial basis.

What was your approach to the new legislation in 1988?

My top priority was to get the new legislation completed. Having spent some time as chairman of a legislative review committee at the Hospitals of Ontario Pension Plan (HOOPP) before coming

to the PCO, I had achieved a degree of familiarity with the legislation. However, the nuances and difficulties that have subsequently become apparent were so technically oriented in nature that it took a long time to realize that a lot of glitches still existed in the PBA, 1987.

We certainly know a lot more about the problems with the legislation on technical grounds than we did four years ago. My only hope is that momentum is maintained and that all levels of government will support the retirement income system.

The expansion of the system is clearly something that the Commission holds dear in its mandate as do those of us who believe in the system and have worked hard to improve it in the face of formidable challenges.

What is the distinguishing feature of pension reform?

The PBA, 1987 has produced desirable features that benefit all parties; members specifically have gained certain assurances and advantages under the Act. One of these advantages and main themes in the legislation is full disclosure. However, some would say in this area the legislation does not go far enough.

An example of enhanced disclosure that the PBA, 1987 provides for and which is only now coming into play is the advisory committee. This concept ensures dissemination of information to members who might otherwise not make a request for information; it also allows members to have input to pension administration.

Members have a right to know about the management of their pensions because the employer is acting as trustee. The employer has a duty of care to look after that money for the members.

Furthermore, employers have a unique opportunity to improve employee relations with the pension plan. The reason it doesn't happen successfully more often is owing to the underlying problem facing employers and members: quite simply, pensions are technical and complex.

The employer should produce and disclose understandable information about the pension plan so employees can appreciate the nature of the benefits and funding and how much the pension benefit costs the employer. If pensions were better understood employers could realize the employee relations opportunity and members could realize what their value is in terms of pensions.

Will the Forms Revision Project substantially ease compliance time and costs?

It is certainly expected to. PCO staff are just now completing the Annual Information Return revision project. The objective is to make it simpler and easier. Every plan will get a basic form and schedules specific to the sponsor needs. Once completed, the plan is to preprint the forms so that there

will only be annual variations.

I hope this philosophy and approach will be applied to each filing requirement. The result will be regulation on an exceptions basis. In this way, regulation will be more acceptable to the sponsor and the protection of members' pension benefits will not be compromised.

Technology will play an important role in the areas of processing and compliance. Since I came to the PCO, changes at the Commission have been dramatic. Today all staff have a computer, systems are being developed and staff are being trained. By the end of this year many filings will be tracked by computer, relieving staff of endless file reviews. This will reduce inefficiencies in the system. In most instances, I expect that the PCO will be able to provide clients with immediate answers to their plan-specific enquiries.

Where do you think the pension system is headed?

The future direction of the system will have to be re-evaluated. All legislators, governments and policy makers must address the pressing concerns of the aging population and the competing pressures of social benefit versus the private sector's willingness to support income security after retirement.

I think there is going to be an evolution as more and more baby boomers approach the 45 year mark. We are beginning to see it now. In growing numbers, people are beginning to realize that their adult life is at the halfway mark. As they look down the road they see retirement only twenty years away.

What satisfactions do you take with you from the PCO?

I think one of the important initiatives to which I've been committed is continuing improvement in the education and training of PCO staff. For me personally, the satisfaction lies in seeing a number of Commission staff who were here when I first arrived advance and take on senior roles. So I think I have fulfilled that part of my mission. I would have liked to complete the revision of the Act and to see all the systems in place. But that process is well under way and I think there comes a time to move on and let someone else do the job, perhaps with a different and fresher perspective.

I would like to acknowledge the staff of the PCO who work with a balanced blend of professionalism, dedication and compassion. The work is daunting but our staff are not daunted. Policy issues can be almost mind-bending, but we have always risen to the challenge. I want to thank and extend best wishes to my staff, the new Superintendent, our Chairman, Commissioners, the Minister and all those practising with dedication and commitment in the pension system. You safeguard a very special trust!

Excerpt of a Speech By The PCO Chairman, Joseph Regan Pensions: Taking Responsibility for the Future

*A speech to the Toronto
Society of Actuaries, Hilton Hotel,
February 14, 1991*

IMAGINE A world without pension plans. Pension actuaries combing the careers sections of newspapers in vain. Drawing unemployment insurance cheques and taking re-training courses to be auditors. A little farfetched perhaps. But the potential for the extinction of defined benefit plans as we know them is very real.

Between March 1989 and March 1990, 688 pension plans started up. At the same time 1,610 pension plans wound up. This represents almost 700 more wind ups than the previous fiscal year and almost 1,100 more than two years ago. Of the 1,610 that wound up last fiscal year, 652 were defined benefit plans. Of this 652 defined benefit plans almost a third were one-person plans.

Wind ups are not good news for anyone in Ontario — employees, employers, taxpayers, the Pension Commission, or actuaries. Obviously, therefore, it is important that the PCO and the actuarial profession work together to ensure that pensions exist and thrive in the future. Together we can curtail the wind ups, and encourage instead start ups of pension plans.

At the PCO we do this by helping plan sponsors comply and promoting increased coverage. Actuaries can help in two ways: by working with us to improve compliance and most importantly, by communication. What do I mean by communication? Communication to the public, communication to legislators and communication to employers. Right now pension plans are all the more important as our society faces an aging population and a shortage of funds in the Canada Pension Plan. Therefore, the time has arrived for you to work with the Commission to convince legislators and most importantly, the public, that pension plans are desirable for the vast majority of people in Ontario.

It is in the interests of employers to offer pension plans if it means they can attract the best employees. In today's employment market employers are having difficulty attracting qualified, motivated staff. Once the public realizes how important pension plans are, employers who offer pension plans will have the hiring edge. The point is that by increasing communications and coopera-

tion each of you can take responsibility for the future of pensions — to make sure there is a future.

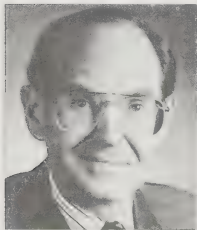
We must all take responsibility for the retirement future of Ontarians and for our own future in the pension business. You as the technical experts, and we as regulators understand the overall issues. So it follows that both have a responsibility to communicate the merits of retirement planning including pension matters. An article in the *Toronto Star*, in April 1990 was a good start, "Start Retirement Saving Early, Actuaries Say". The first paragraph says, "Canadians who hope for adequate retirement income must start saving as early as age 25 to ensure they will have enough money..." Let us see more articles like this.

It was George Bernard Shaw who said in 1883, "People are always blaming their circumstances for what they are. I do not believe in circumstances. The people who get on in this world are the people who get up and look for the circumstances they want, and, if they cannot find them, make them." I urge each of you to be actively involved. Talk to the media. Talk to employers and clients. Talk to the PCO. Talk to the public. Talk to plan members. When was the last time each of you actually talked to a plan member? Create awareness. We all have a great message. Let all of us work together to get the message out.

Notices

Pension Commission of Ontario Appoints Superintendent of Pensions

ON MAY 2, 1991 M. Joseph Regan, Chairman announced the appointment of D. Ross Peebles to the position of Superintendent of Pensions. His



D. Ross Peebles

appointment took effect on June 3, 1991. Mr. Peebles was born in Montreal and received his early education at Lower Canada College. In 1968 he graduated from the University of New Brunswick with a degree in civil engineering. Later in the same year, he was awarded an Athlone Fellowship to study transport engineering at the University of Birmingham, where he received a master's degree in 1970.

After leaving university, Mr. Peebles joined the Canadian National Railways in London, England and later moved to the company's headquar-

ters in Montreal.

In June 1973, commencing his civil service career, he joined Management Board of the Government of Ontario and held a variety of positions including Executive Assistant to the Secretary of the Interministerial Committee on Collective Bargaining, and Director of Administrative Policy.

In November 1980 he moved to the Ministry of Transportation and Communication as Executive Director of the Communications Division. In the fall of 1982 he became Executive Director of the Inflation Restraint Board - an agency of the Ministry of Treasury and Economics and in January 1985 he joined the Ministry of the Attorney General as General Manager. In June 1987, as Assistant Deputy Attorney General, Mr. Peebles assumed responsibility for the administration of Ontario's law courts. Two years later he was appointed Assistant Deputy Minister of Trade Expansion with the Ministry of Industry, Trade and Technology.

In June 1991, he assumed the duties of Superintendent of Pensions, Pension Commission of Ontario with responsibility for administering the Pension Benefits Act, 1987.

Members' Pregnancy and Parental Leave May Require Plan Amendment

In circumstances where a plan member is absent from employment as a result of pregnancy or parental leave, the member may elect to continue participation in the pension plan throughout the term of the leave (making contributions if required by the pension plan). In such a case, according to the recently proclaimed Employment Standards Amendment Act, 1990 (the "ESAA, 1990") the employer's contributions to the pension plan must continue throughout the term of the leave.

The requirement applies to pension contributions that have been made or should have been made from the date of proclamation, December 20, 1990. This amendment to the ESAA affects employees who may have commenced pregnancy or parental leave prior to that date and were still on leave as of December 20, 1990; otherwise it is not retroactive.

Administrators should be aware that all plans registered with the PCO will have to be amended to conform with the ESAA, 1990 requirement. Further, each plan must ensure that there is adequate funding to meet this new requirement.

Provisions in the Legislation

The specific provisions in the ESAA, 1990 that deal with this requirement are:

definitions

"parent" includes a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with a parent

of a child and who intends to treat the child as his or her own;

"parental leave" means a leave of absence under subsection 38a(1);

"pregnancy leave" means a leave of absence under subsection 36(1); and

legislation

36(1). *A pregnant employee who started employment with her employer at least three months before the expected birth date is entitled to a leave of absence without pay.*

(2). *An employee may begin pregnancy leave no earlier than seventeen weeks before the expected birth date.*

38a(1)

An employee who has been employed by his or her employer for at least three months and who is the parent of a child is entitled to a leave of absence with pay following,

(a) the birth of the child; or

(b) the coming of the child into custody, care and control of a parent for the first time.

38e(1).

An employee may elect in writing to continue to participate during pregnancy leave or parental leave in any pension plan, insurance plan, accidental death plan, extended health plan or dental plan related to his or her employment

(2). *If an employee elects to continue to participate in a plan described in ss. (1), the employer shall, during the leave, continue to make the employer's contributions for the plan if the employee continues to make the employee's contributions, if any.*

38j. *Section 38e does not apply in respect of any period before this section comes into force.*

Administrators and others involved in the management of employee benefits may wish to familiarize themselves with the general requirements of the ESAA, 1990. Enquiries regarding this specific requirement should be directed to Peter Jenkins, Employment Standards Branch, Ministry of Labour, 4th Floor, Tower B, 40 Dundas Street West, Toronto, Ontario M5G 2C2. He can be reached at (416) 326-7040 or fax (416) 326-7061.

Questions and answers regarding the ESAA, 1990 requirements will appear in future issues of the PCO Bulletin in the section, Your Questions Answered.

Quebec Supplemental Pension Plans Act - Ontario Plans With Quebec Members

As noted in previous issues of the PCO Bulletin, all plans registered in Ontario that include members who are subject to the requirements of the Quebec Supplemental Pension Plans Act must take appropriate action to ensure that the plan text reflects the new requirements.

If the plan has already filed a restated plan text to comply with current Ontario requirements, it is only necessary to file an amendment which addresses and meets the Quebec requirements. If the plan has not yet filed a restated plan text, the necessary provisions respecting Quebec members should be incorporated in the restated plan text when it is filed.

The deadline for filing Quebec amendments was December 31, 1990. Requests for extensions to the deadline must be submitted to the PCO in writing for consideration on a plan-by-plan basis.

On behalf of the Régie des Rentes du Québec, the PCO recently distributed a four-part newsletter and a checklist. This checklist must be completed and filed when the Quebec amendments, or restated plan text with the Quebec amendments, are filed with the PCO.

CPC/CAPSA/CIA Jointly Sponsor Fall Forum

A two day Public Forum on Pensions scheduled for Thursday, September 26 and Friday, September 27, 1991, at the Sheraton Hotel in Toronto, will be of interest to anyone with a concern for the future of retirement income programs in Canada. The theme of the Forum is "Increasing Retirement Income Coverage: Meeting the Challenge".

The theme of the first day is: "A report card on retirement income coverage". It will address the current status of retirement income coverage in Canada and present the key issues facing plan sponsors, regulators and industry professionals. The theme of the second day is strategies for reaching those without retirement income coverage. It will identify problems and obstacles impeding coverage, seek ways to overcome them and explore alternative approaches to expanding coverage.

Forum speakers have been drawn from a wide spectrum of interests in the pension industry today: plan sponsors, plan members, labour, advi-

sors, suppliers of services, associations, regulators, legislators and the business media.

Organizers have designed the Forum to:

- foster and encourage constructive dialogue among all involved in private sector retirement income programs; and
- engage participants actively in a think-tank for developing appropriate retirement income strategies for the 21st century.

Forum organizers are members of three sponsoring non-profit organizations. The Canadian Pension Conference (CPC) is a non-profit organization, established in 1960. The main objective of the CPC is to promote increased understanding of income security and employee benefit matters in Canada through the dissemination of information and the provision of national and regional forums open to all interested individuals and organizations.

The Canadian Association of Pension Supervisory Authorities (CAPSA) is an interjurisdictional body of senior civil servants responsible for the administration of pension legislation in jurisdictions with such legislation. Senior officials from Finance Canada, Revenue Canada and Statistics Canada concerned with pension policy are also members.

The Canadian Institute of Actuaries (CIA) is the professional body of actuaries in Canada established by an Act of Parliament in 1965. The Institute consists of nearly 1,700 Fellows with over a third working in the pension field. Through its committees, the Institute consults extensively with government on pension policies and issues.

Watch the mail for Forum registration details or contact the CPC's national office at 514-866-3687 for further information.

Commission Meeting Dates To Be Published

It is useful for those dealing with the PCO to be aware of the dates of Pension Commission meetings where the business of the Commission is discussed, and applications and policies are considered. Commission meeting dates will be listed in each issue of the PCO Bulletin; see page 14.

Regular Commission meetings are held in addition to separately scheduled PCO hearing dates.

Canadian Pension Conference Launches Lecture Series

In the fall, the Ontario Regional Council of the Canadian Pension Conference (the "CPC") will launch a series of eight lectures running from October 1991 to May 1992. The lectures are designed to meet the needs of individuals practising in the pension and benefit area at the introductory level and provide a framework for professional

development.

Leading industry professionals will present topics structured to give participants a thorough understanding of each topic including:

- actuarial basics;
- legal and legislative issues;
- investments (2 sessions);
- accounting;
- plan administration; and
- employee communications.

The lectures will be held at the Visitor Centre Auditorium of The Toronto Stock Exchange from 3:30 p.m. to 5:00 p.m. For more information contact Kathleen Taylor, Vice President, Trafalgar Capital Management (416) 842-5310.

Court Decisions

The following cases are of interest to professionals practising in the pension field because they deal with the procedural aspects of surplus withdrawal applications. These three cases were heard in the Ontario Court (General Division). Copies of the decisions may be obtained, in person, for a photocopying fee from the particular court referenced in the notice.

**RE: Prudential Securities Group Inc. v.
National Trust Company et al.
Heard: March 11, 1991
Court File #RE 244/91**

Prudential Securities Group Inc. applied for an order authorizing the distribution to it of funds from surplus of the pension plan pursuant to s.71(2)(c) of Regulation 708/87 under the PBA, 1987.

Mr. Justice Mandel's decision is of particular interest because it deals with the role of the Court and the Pension Commission in dealing with such applications and whether an applicant should first obtain consent from the Pension Commission prior to proceeding to Court.

A copy of the decision may be obtained from the Ontario Court (General Division), 145 Queen Street West, 1st Floor, Room 125, Toronto, Ontario.

**RE: Nu-Kote Canada Inc. v. Royal Trust Corporation of Canada, National Automobile, Aerospace and Agricultural Implements Workers Union of Canada, Local 303, et al.
Heard: April 18, 1991
Court File #RE 2546/90**

Nu-Kote Canada Inc. sought a declaration that it was entitled to the surplus funds held in the pension plan provided for its employees, which wound up on June 29, 1989.

Ruling in favour of the applicant company, Mr. Justice Lang held that consent of the Pension Commission to payment of surplus funds to the

employer was not a prerequisite to obtaining a declaration of ownership from the Court.

A copy of the decision may be obtained from the Ontario Court (General Division), 145 Queen Street West, 1st Floor, Room 125, Toronto, Ontario.

RE: Arrowhead Metals Ltd. v. The Royal Trust Company et al.

Heard: May 17, 1991

Court File #RE 524/91

Arrowhead Metals Ltd. sought a declaration that it was entitled to any surplus funds in the pension plan and a mandatory order requiring the trustee to pay to the applicant company any surplus remaining after the satisfaction of all liabilities, subject to the Pension Commission filing a consent with the Court pursuant to s.7a(2)(c) of Regulation 708/87 under the PBA, 1987.

The application was adjourned pending receipt of consent from the Pension Commission. Madame Justice German preferred the reasoning of Mr. Justice Mandel in the Prudential Securities case and declined to following the reasoning of Mr. Justice Lang in the Nu-Kote case.

Arrowhead Metals Ltd. sought leave to appeal the order of Madam Justice German in the Ontario Court (General Division), and in the decision of Madam Justice Weiler, heard on June 6, 1991, Arrowhead's position was considered. Arrowhead's motion asserted that there were conflicting decisions as to whether the court's authorization of distribution of pension funds must be obtained prior to obtaining the consent of the Commission, and further that there was "good reason to doubt the correctness of the order of Justice German".

Madam Justice Weiler stated that both Commission consent and a court order "authorizing the distribution of funds from surplus, on the basis that the employer owns the surplus" were required before funds could be distributed pursuant to paragraph 7a(2)(c) of Regulation 708/87 under the PBA, 1987. The Court did note, however, that the legislation did not dictate that one took precedence over the other.

Madam Justice Weiler found "no conflict" between the decision of Mr. Justice Mandel in *Prudential Securities* and the decision of Mr. Justice Lang in *Nu-Kote* relied upon in *Arrowhead*, and furthermore found no conflict between these two decisions and that of Justice German in *Arrowhead*. Neither case concluded that PCO consent was required before the court application could be dealt with. Finally, Madam Justice Weiler found that Justice German had made "no clear error of law", nor had she improperly exercised her discretion in adjourning Arrowhead's application pending Commission consent. Accordingly, the motion was dismissed.

Status of Proposed Auditing and Accounting Regulations

OVER THE PAST three years, Administrators of pension plans in Ontario and their advisors have had an opportunity to work with the Regulation under the PBA, 1987, which introduced new requirements with respect to financial reporting and the audit of pension plan financial statements. PCO staff have been made aware of a number of problem areas in the Regulation. We have examined these areas and discussed possible solutions with the Canadian Institute of Chartered Accountants, an advisory group made up of representatives from the major accounting firms, and members of the Actuarial and Accounting Subcommittee of the PCO.

As a result of this discussion and consultation, PCO staff have prepared draft regulations to:

- a) provide plan members with more meaningful financial information;
- b) improve the quality of recordkeeping by pension plans;
- c) clarify various matters having to do with accounting, auditing and financial reporting; and
- d) increase regulatory efficiency.

In order to obtain input on the appropriateness of these proposed changes, pro-forma drafts of the amended regulations together with other background material have been circulated to various interested parties, including large pension plans, labour organizations, insurance companies, trust companies, accountants and actuaries. Once this consultation process is completed, the PCO will be in a position to take its recommendations forward to the Government. The following is a brief summary of the proposals.

Improved information to plan members

In the context of a balanced regulatory environment that is fair to all parties, the policy recommendations developed by the PCO strive to enhance the protection of member's benefits and entitlements. Perhaps the most effective and efficient means of achieving enhanced protection is to educate members on the workings of their pension plans. It is important that sponsors take the necessary steps to help ensure that members receive

sufficient and appropriate financial information so that they can assess the financial condition and performance of their plans.

It is proposed that when a member joins a pension plan, the Administrator will be required to give the member information on deadlines for remittance of employee and employer contributions, and for defined benefit plans, more details on benefit entitlements and restrictions on payments out of the Guarantee Fund should a plan default.

Each member of a pension plan should receive currently an Annual Statement. The proposed changes would expand the minimum information to be given to a member in this statement. For example, members of defined contribution plans would be informed of the formula used to determine both employer and employee contribution. They would also be reminded that their retirement income from the plan will be significantly affected by such factors as the interest rates prevailing for life annuities at the date of their retirement.

Members of defined benefit plans would receive information extracted from the most recent actuarial valuations performed for going concern funding and solvency purposes. They would be informed of the existence of any surplus and how this will be used in funding normal costs, and also the existence of any actuarial liability or solvency deficiency and how these will be funded.

Annual financial statements

The draft regulations would continue to permit an Administrator to file either "fund" financial statements (showing only the net assets of the pension fund) or "plan" financial statements, which would show the net assets as well as the accrued actuarial liability for pension benefits.

Discussions have been held with the CICA regarding the appropriate wording for an auditor's report on "fund" financial statements. They have suggested that an appropriate approach would be for the opinion paragraph of the auditor's report to refer to the "prescribed basis of accounting referred to in Note 1 to the financial statements". Note 1 to the financial statements would be worded along the following lines:

"The financial statements are pension fund financial statements prepared for regulatory purposes and are not general purpose financial statements. They do not disclose the actuarial present value of accrued pension benefits. In all other respects, these financial statements are prepared in accordance with generally accepted accounting principles."

This is commonly called the "appropriate disclosed basis of accounting" (ADBA) approach

and is often used for regulatory reporting.

In addition, the CICA has been asked to reconsider the basis determining the liability for pension benefits appearing in "plan" financial statements. PCO staff have taken the position that the pension liability appearing in "plan" financial statements should be based on the going concern funding valuation prepared by the actuary for regulatory purposes, rather than the Administrator's best-estimates basis recommended by the CICA. It is not clear at this time whether the CICA will reconsider any amendment to their current recommendations on this issue.

The proposed regulations would also make financial statement filing requirements less onerous. Large plans would still be required to file annual audited financial statements, but the definition of a large plan would be amended so that fewer plans would require an audit.

Instead of filing financial statements with the PCO, smaller plans would submit a new Schedule E to the Annual Information Return. This schedule is a preprinted form showing the information required to be disclosed by regulation. Readers of recent issues of the Bulletin will be aware that the PCO has conducted initial consultation with respect to Schedule E. As a result of this exercise, the Schedule has undergone substantial revision.

The PCO intends to carry out a pilot project to test the effectiveness of Schedule E and its instructions in the next few months. The test, using the revised Schedule, will be directed to Administrators. This form should improve the quality of information given to the PCO, and not take a great deal of time to complete. There would also be exemptions for very small plans (e.g., those with less than 10 members) from having to file any statement or financial schedule with the PCO.

In addition, the proposed regulations clarify certain definitions and minimum disclosure requirements. More guidance is provided on matters such as master trusts. Also, the requirements for disclosure of significant individual investments would be less onerous.

Minimum records and audit of contributions, benefit payments and participant data

The PCO has found that even when audited financial statements with unqualified opinions have been obtained, the detailed records supporting such financial statement elements as contributions, benefit payments, and participant data may be deficient.

Accordingly, the proposed regulations would require Administrators to maintain certain specific records. Further, large pension plans would be

required to engage their auditors to perform specific procedures on these records and report to the Administrator on the results of carrying out such procedures. When such procedures reveal deficiencies in the records, the auditors would be required to provide the PCO with a copy of their report.

Reports from segregated funds

At present, the financial statements of a segregated fund (including pooled funds) may not be audited. If at the end of its fiscal year a pension plan has an investment in a segregated fund, the regulations would require an Administrator to obtain an audited financial statement of that segregated fund for the fiscal year end of the segregated fund. The audited financial statements would be kept on file by the Administrator for examination by members or by the PCO, on request. If the fiscal year end of a pension plan and a segregated fund in which it has invested do not coincide, an unaudited statement of the segregated fund would also be required as at the fiscal year end of the pension plan.

The objective of these proposals is to ensure that annual audited information is available regarding all segregated funds in which a plan invests.

Funds under administration by trust companies

PCO staff are concerned that the very significant amounts of pension funds under the administration of trust companies are not audited. Accordingly, under the proposed regulations, Administrators using the custodial, administrative and recordkeeping services of a trust company would be required to obtain an annual report from the trust company on the internal control objectives of its pension trust and record-keeping services and the key controls designed to achieve those objectives, in a format described in section 5900 of the CICA Handbook.

Such a report (commonly called a section 5900 report) would have to meet certain minimum disclosure requirements (e.g., period covered, control procedures that must be addressed) and in addition the report would have to be accompanied by an auditor's report on whether the control objectives were achieved and whether the controls operated effectively throughout the period covered.

Any comments on the proposals would be most welcome. If you are interested in receiving a copy of the pro-forma draft regulations and background material, contact the Chief Accountant c/o Research and Communications (416) 972-5825

Administrative Practices

Checklist to Facilitate Wind Ups Now Available

Background

A substantial backlog of wind ups in process has been created for a number of reasons. The increased volume of filings, the detailed nature of the wind up review process and the limited number of staff resources available are contributing factors. Nonetheless, the requirements set out in the PBA, 1987 that apply to wind ups must be satisfied. Administrators are responsible for filing appropriate documents with certification before staff recommendations for approval can be made.

Purpose

The review and processing of wind ups must be conducted in a reasonable length of time. Therefore, the Superintendent's Checklist for Compliance on Plan Wind Up has been designed to simplify and expedite the wind up review process. The Checklist is a tool that itemizes wind up requirements and summarizes documentation that must be filed. Where it is followed, lengthy correspondence addressing omissions of documents and information, and accompanying delays can be avoided.

Requirements

The Checklist requires that the Administrator confirm that all relevant matters are addressed and to certify that documents and their contents comply with the PBA, 1987 and Regulation.

All pension plans with wind ups under review currently are required to complete and file the Superintendent's Checklist with the appropriate documents. Recommendations to the Superintendent and the Commission cannot be made without it. If a wind up is already in process, a Checklist will be forwarded by your Pension Officer.

Although the Checklist is now in use, we are seeking your assistance in improving the document for the benefit of all involved. Please send your comments and recommendations in writing to Judith Chalmers Re: Checklist, Research and Communications, 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2.

New Requirement for Submission of Actuarial Reports and Cost Certificates

Staff have found the practice of incorporating the actuarial report or cost certificate of several plans of the same sponsor under one report difficult for monitoring purposes.

Therefore, effective for review dates on or after January 1, 1992 separate actuarial reports and cost certificates must be prepared and filed for each registered pension plan. The reporting period must be clearly indicated.

Benefit Improvements in Ongoing Plans

The following principles are to be applied to plan amendments which seek to improve benefits in ongoing plans:

- 1) the plan amendment can be made to improve benefits for each category of employees - actives, deferreds, retirees - as long as the improvement is provided on the same basis for all members within each category;
- 2) if improvements are provided only for a class or classes within a category, notice must be given to all members, or in the case of deferreds and retirees, to all former members within the category, pursuant to subsection 27(1) of the PBA, 1987; and
- 3) improvements cannot be provided for named individuals.

This interim practice does not constitute a comprehensive treatment of practices and procedures. The PCO is interested in receiving industry comments on this interim administrative procedure. Please send your comments to J. Williams, Research Analyst at 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2.

Your Questions Answered

- Q. Section 40(1) of the PBA, 1987 requires that the commuted value of the benefit for pre-1987 employment be compared to the value of the employee contributions plus interest. If the commuted value is less than the value of the contributions plus interest it must be increased to be equal to the value of the contributions plus interest. Is the comparison to be done at the time of termination or at the time of retirement?**
- A. The intention of section 40(1) of the PBA, 1987 is that the comparison be done at the time of termination.
- Q. The CIA Recommendations for the Minimum Transfer Values of Pension specifies "unless a different table is considered more appropriate for a particular plan, a current universal table such as the GAM83 table should be used." Which mortality table(s) will the PCO accept for this purpose?**
- A. In conjunction with the CIA's guidelines, the PCO will accept, as a general rule, only the GAM1983 mortality table for the calculation of minimum transfer values. An alternative mortality table can be utilized only if the plan's actuary can demonstrate to the satisfaction of the PCO that the mortality table chosen reflects the expected mortality after termination of employment among persons who were formerly members of the pension plan. The GAM83 table is published on pages 880 and 881 of Volume XXXV of the Transactions of the Society of Actuaries.
- Q. A restated plan text has been submitted to the PCO, but no confirmation of registration has been received. An amendment is now being made. Is the amendment to be made only to the restated plan, or must an amendment also be made to the prior plan because the restated plan has not been registered?**
- A. The amendment need only be made to the restated plan. Once a restated plan is submitted it is assumed to be the current plan, even though confirmation of registration is pending. If there is a problem with the restated plan, and subsequently a problem with the amendment, the issue will be dealt with at the time the restated plan and its amendments are reviewed for registration.
- Q. May active members of a pension plan receive a refund of additional voluntary contributions?**
- A. Yes, subsection 64(2) of the PBA, 1987 permits a refund of additional voluntary contributions to active members of the plan provided that the terms of the plan permit, subject to Commission consent.
- Q. Can a pension plan arrange for administrative expenses to be paid from the sponsor's revenue and then billed to the pension fund on a regular basis, for example quarterly or annually?**
- A. Yes, the pension plan may be written to provide for this type of arrangement.
- Q. May negotiating fees (e.g. an actuary consulting during collective agreement negotiations) be deducted from the pension plan as an administrative expense?**
- A. No. Subsection 23(9) of the PBA, 1987 provides for the payment of usual and reasonable fees from the pension fund. It is the position of the

PCO that actuarial/consulting fees, incurred by either the company or the union as part of collective agreement negotiations, are not usual and reasonable expenses.

Q. Compliance Assistance Guideline #4 Revised — A Guide to the Wind Up of a Pension Plan — states that the Administrator of a plan in the process of full or partial wind up should disclose intentions with respect to the proposed handling of surplus in the wind up report. Does this mean that Administrators must state how the surplus will be allocated and distributed, or can they simply report that they will not be dealing with the surplus at that time?

A. Administrators are not required to state how surplus will be allocated and distributed if they do not wish to deal with the issue at that time. A statement to this effect in the wind up report is sufficient to consider the question “handled”.

Q. What is the earliest age at which a locked-in RRSP can be used to purchase a life annuity?

A. A locked-in RRSP can be used to purchase an annuity at any time after the former member reaches 55. Clause 18(2)(iii) of the Regulation says “not earlier than ten years prior to the normal retirement age under the Canada Pension Plan or Quebec Pension Plan. The former member of the plan is not required to wait until age 65 to start receiving a pension. A former member is entitled to an early retirement pension, whether from the pension fund or from an annuity, within ten years of normal retirement age.

Q. Are PBGF assessment fees required for defined benefit plans with no unfunded solvency liabilities?

A. Yes. In addition to any PBGF fee which is payable as a result of an unfunded solvency liability, all defined benefit plans (except multi-employer plans, fully insured contracts and plans otherwise exempted by the Regulation) must pay a PBGF levy of \$1.00 per member towards the PBGF. The Regulation does not require, however, the remittance of amounts less than \$10.00.

Q. The effective date of the pension plan is January 1, 1990. The Application for Registration and accompanying plan documents and fees are not filed until July, 1991. The PCO mailed the acknowledgement and the Annual Information Return (AIR) in Au-

gust, 1991. The Administrator was subsequently assessed late filing fees for the AIR. Why are late AIR filing fees charged?

A. Under section 9(1) of the PBA, 1987, the Administrator must file the Application for Registration, supporting documents and fees within 60 days after the establishment of the plan. Whether or not the Application for Registration is filed on time, the AIR is considered due within 6 months of the fiscal year end of the plan. PCO staff are obviously not able to assist the Administrator by mailing an AIR and the Compliance Assistance Guideline “A Guide to Preparing an AIR”, until the Application for Registration is filed.

Q. Will the Commission grant an application for a refund of contributions to employees under subsection 64(7) where a funding deficit is thereby created in the plan?

A. Generally such an application would not be recommended by PCO staff. The Commission would, however, exercise its discretion in the matter.

Q. In subsection 52(5) of the Act, on marriage breakdown a spouse is given the same entitlement to any option available to the member. Does this mean that the spouse is given the same option that the member chose?

A. No. The effect of this subsection is to give a spouse the same options as the member on marriage breakdown. For example, if the member is age 40 and is terminating, there would be four options (deferred annuity under the plan, transfer to locked-in RRSP, member purchases own deferred annuity, leave money in plan for deferred pension). The member could choose a deferred annuity, the spouse could choose a locked-in RRSP.

Q. Can additional options be provided to spouses on marriage breakdown that are not available to the member. For example, a member at retirement receives an immediate pension and the spouse is given transfer options.

A. Yes. A pension plan may provide for this type of arrangement on marriage breakdown.

A Speech by Nurez Jiwani, Director, Pension Plans Branch-How to Administer a National Pension Plan

*A speech for a Program sponsored by the
Canadian Institute on April 19, 1991*

NUMEROUS pension plans registered in Ontario have members in many different provinces in Canada and it is common for these members to be transferred from one province to another while employed with the same company. In such a case, they are still members of the plan. In situations that arise as a result of such transfer, Administrators are faced with the problem of which pension law to apply in determining benefits.

There are two possible approaches: the final location approach and the checkerboard approach. With the exception of Ontario, Manitoba (who is presently in the process of changing its approach) and the federal authority (who are not affected by this problem as their members are employed in provinces), all the other provinces in Canada apply a form of the final location rule in determining the benefits of plan members who move from one jurisdiction to another. This means that the law to be applied is that of the jurisdiction in which the member terminates employment.

Ontario applies the checkerboard approach. This means that the law to be applied is that of the jurisdiction of employment during the time the member accrued the benefits while employed in that province. This means that the Administrator must calculate the benefits separately for each period of employment in each province using different rules and regulations: a difficult, complex and costly task. Administrators would prefer a common approach among all the jurisdictions - most likely a final location approach.

Why does Ontario insist on being the odd man out in this area? Why not go along with the rest of Canada? The reason is that Ontario legislation provides greater or enhanced benefits than the laws of other jurisdictions in some cases, such as section 75 wind-up rules, early retirement enhanced benefits and the possibility of indexation. Also, we have more liberal rules in the areas of part-time employees, spousal benefits and pre-retirement death benefits. It is often the case that Ontario members accrue greater benefits as a result of their employment here. If Ontario opted for a final

location approach, such members could lose these benefits when they leave the province. Our primary concern and responsibility is the protection of the pension benefits and rights of plan members, and anything that could weaken these would be questionable.

The PCO has been told that in general, many sponsors of multijurisdictional plans extend the rules of the province of registration to determine pension entitlement in respect of all employment service, subject to any minimum standards in place in the final location jurisdiction. For example, a plan registered in Ontario will extend Ontario minimum standard rules to members in Saskatchewan, subject to any of Saskatchewan's rules.

The following are examples of what occurs in various situations.

1. Vesting

A plan member with three years membership in a plan moves from Ontario to Saskatchewan and terminates employment in Saskatchewan after six months. Saskatchewan's vesting rules currently are age plus service equals 45, with one year continuous service. Does the member have any vested service? If so, is it three years vested and six months non-vested?

Ontario would apply the checkerboard approach that says the member would be vested for the three years in Ontario; Saskatchewan, using final location, would likely say the member is not vested unless the member satisfies the 45 age plus service requirement. In practice, the plan would likely extend Ontario rules to all service, and the member would be fully vested.

2. Different Calculation of Commuted Value

Where a member moves to a jurisdiction with different statutory requirements for determining the commuted value of benefits, by which rules are the different periods of service determined?

Once again, checkerboarding requires the use of different values for each jurisdiction and final location requires the application of the rules of the last place of employment. In practice, most plans are administered such as to apply the rules of the jurisdiction which results in the highest values, again subject to any minimum standards in the jurisdiction of final employment.

3. Joint and Survivor Spousal Benefits

Where a member has several years of service in Ontario and moves to and subsequently retires in a province which does not require a joint and survivor spousal benefit on retirement, must the joint and survivor benefit be given with respect to the portion of Ontario service?

Checkerboarding would require such a division of the benefit, which would result in two pensions. In practice, the rules of the province of registration, in this case Ontario, are likely to be extended to spousal benefits for all service, with the joint and survivor benefit provided for all service.

4. Pre-Retirement Death Benefit

Where a member has service in Ontario, moves to another jurisdiction and dies there prior to retirement, does the pre-retirement death benefit take into account the Ontario requirements with respect to the commuted value of post-1987 benefits for Ontario service or, do the rules of the last province apply with respect to all service, including Ontario service?

In practice, the province of registration rules are usually applied to all service.

5. Plan Wind Up

a) Enhanced Early Retirement Benefits

Where a member is employed in Ontario on plan wind up but has service in another jurisdiction, is that member given full s. 75 benefits for his entire service or only those benefits relating to the member's Ontario service?

The checkerboarding approach would look to the wording of the PBA, 1987 which says that a member employed in Ontario is entitled to all the benefits in question; there is no differentiation for Ontario and non Ontario service. In this case, the PBA, 1987 does prescribe final location.

b) Surplus

On plan wind up, which legislation is applied with respect to surplus for periods of service in other jurisdictions?

In practice, surplus legislation is applied on a final location basis.

The practical answer to all of these problems is to grant the employee the higher of the benefits arising from the jurisdiction of registration and the jurisdiction of final location rules for all years of service. To a great extent, this appears to be how the plans are being administered.

Pension regulators acknowledge that the checkerboard approach is not practical and it is doubtful that many plans are being administered that way. The exception comes in multi-jurisdictional plan wind ups which involve claims on the Pension Benefits Guarantee Fund (the "PBGF"), where claims must be based on strict legal entitlements; in this case, the checkerboard approach must be applied.

In 1968, a Reciprocal Agreement was entered

into among the provinces which had enacted pension legislation. The purpose was to create a structure by which provinces could apply the laws of other jurisdictions in situations of a plan with members in many jurisdictions. Also, it was an attempt to harmonize wherever possible, common pension legislation. Subsequently, other provinces and the federal authority signed the Agreement.

As many of the current issues were not foreseeable in 1968, the current Agreement does not address them. The jurisdictions have not been able to agree on a common approach in determining how to calculate benefits (checkerboard versus final location), and as a result, the practical problems have not been able to be resolved. Members of CAPSA have been attempting for many years to revise the existing Agreement so as to resolve some of these issues, but progress has been slow and difficult. To achieve harmony, each jurisdiction must give up some authority over certain areas, and in some instances that means that members in each jurisdiction could lose rights and benefits.

In practice, an unofficial division of pension issues has been made between issues of administration and issues of entitlement. The former are governed by the legislation of the jurisdiction where the plan is registered; the latter are governed by the legislation where the member is employed.

Administrative issues are those which are more connected with the requirements of pension regulation. This includes such things as:

- the processes of plan registration and plan amendment;
- the payment and level of fees;
- adherence to time periods for filing reports, documents and notices;
- production and filing of financial statements and reports such as audit reports;
- payments of administrative expenses from the pension fund;
- disclosure requirements;
- access to documents;
- duties of Administrators; and
- onsite examinations of plans.

Issues of entitlement are more concerned with actual determination and calculation of benefits and what members must receive. Examples are:

- vesting and locking-in;
- commuted value of benefits upon termination of employment;
- use of unisex rules;
- enhanced benefits on wind-up;
- indexing; and
- portability.

For these issues, the legislation where the member is employed would govern.

A critical distinction must be made between a jurisdiction delegating its authority and substituting its authority to another jurisdiction. If a province delegates its authority, it is transferring the power to administer its own laws on its behalf to the other jurisdiction. But, if a province substitutes its authority, it is transferring the power to administer the laws of the other province on its behalf to that province.

CAPSA may be able to agree on:

- 1) administrative matters that can be delegated because the law is the same; or
- 2) administrative matters of which the law of the jurisdiction of registration may be substituted because it is substantially the same as that of the jurisdiction of final employment, or because it gives equivalent protection.

The real difficulty is that there are substantive issues which may be contentious in respect to which there must be uniformity for a multijurisdictional plan to work. This approach will involve the agreement of each jurisdiction to accept the law of another jurisdiction with respect to an issue to which there may be strong and divergent views among the jurisdictions.

This is, in the end, a political decision that must be made by the government of each jurisdiction.

This speech was based on policies developed by a CAPSA subcommittee chaired by the Director of the Secretariat. Specific questions on these policies should be directed to Priscilla Healy at (416) 972-5753 or Jerry Williams at (416) 972-5826.

Documents Submissions - Correction

In the March, 1991 Bulletin a Reminder to Administrators requested that documents be submitted on 8" x 11" paper.

Because of a typographic error this should have read 8.5" x 11". We apologize for any confusion this error may have caused.

Tribunal Activities

This section summarizes all matters related to the Pension Commission of Ontario.

Commission Meeting Dates, 1991

The Pension Commission will convene on the following dates:

Thursday, July 18, 1991
Thursday, August 29, 1991
Thursday, September 19, 1991
Thursday, October 17, 1991
Thursday, November 21, 1991
Thursday, December 19, 1991.

Requests for Hearings

a) Hospitals of Ontario Pension Plan ("HOOPP")

At a preliminary hearing held October 11, 1990, the Commission ruled it had jurisdiction to require a hearing resulting from the Superintendent's refusal to make an order pursuant to section 88 of the PBA, 1987 to compel the Ontario Hospital Association to comply with clause 8(1)(e). The reasons for this decision were released November 22, 1990 and published in the December 1990 issue of the PCO Bulletin. A motion to quash an appeal of the November 22, 1990 Commission decision was granted by the Ontario Court (General Division) Divisional Court. The Commission hearing on the substantive issues was held April 19, 1991. Reasons pending.

b) General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published in the March 1991, Vol.2, Issue 1 edition of the Bulletin. A pre-hearing conference was held January 25, 1991. The hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, 1991 and was adjourned to August 19 - 21, 1991.

c) American Federation of Musicians' and Employers' Pension Welfare Fund (Canada)

A request for a hearing resulting from a Notice of Proposal to make an Order pursuant to section 88 of the PBA, 1987 issued by the Superintendent of Pensions. The Commission hearing was held March 7, 1991. Reasons pending.

Commission decisions in these matters will be reported in future issues of the PCO Bulletin.

Commission Decisions

In this issue the request for hearing, the Commission Decision and the Superintendent's Order in respect of Cluett, Peabody & Company Canada Limited have been published together for convenience and clarity.

Cluett, Peabody & Company Canada, Limited Employee Retirement Plan (Van Raalte Division)

A request for a hearing resulting from a Notice of Proposal to make an Order pursuant to section 88 of the PBA, 1987 issued by the Superintendent of Pensions. This matter was heard by the Commission March 21, 1991. The Commission ordered the Superintendent to carry out his Notice of Proposal to Make an Order. The Commission Decision dated May 6, 1991 and the Superintendent's Order dated May 16, 1991 follow. The Decision of the Commission is being appealed.

DECISION

IN THE MATTER OF the Pension Benefits Act, 1987, S.O. 1987 c.35;

AND IN THE MATTER OF a proposal by the Superintendent of Pensions to make an Order under section 88 of the Pension Benefits Act, 1987, respecting the partial wind up of the Cluett, Peabody Canada Inc. Employee Retirement Plan;

AND IN THE MATTER OF a Hearing by a Panel of the Pension Commission of Ontario pursuant to subsection 90(8) of the Pension Benefits Act, 1987.

BETWEEN:

CLUETT, PEABODY CANADA INC., Applicant

- and -

THE SUPERINTENDENT OF PENSIONS, Respondent

At the commencement of the hearing, counsel for the Applicant made a Preliminary Motion attacking the jurisdiction of the Pension Commission of Ontario (hereinafter the 'Commission'). After hearing argument from both parties the Commission reserved its Decision on the preliminary motion and proceeded to hear evidence and argument on the main issues raised in the hearing. We are aware that to proceed in this manner could result in an unnecessary hearing on the merits should we ultimately accept the Applicant's argument on jurisdiction. However, the question of jurisdiction is of sufficient importance that the Commission wished full opportunity to consider the matter carefully. We have no doubt that we are able to proceed in this manner. Re Cedarvale Tree Services Ltd and Labourers' International Union of North American, Local 183 [1971] 3 O.R. 832. To require the Commission to halt its proceedings whenever its jurisdiction is objected to would render its hearing and appeal powers under the Pension Benefits Act, 1987 (hereinafter the 'Act') largely nugatory.

We now turn to the consideration of the issues before us, addressing first our decision on the preliminary motion. In order to place the disposition of that motion in context, it is necessary to set out certain salient facts as well as the nature of the proceedings before us.

NATURE OF THE PROCEEDINGS

Neither the facts of this case nor the procedural route by which the matter has come to the Commission are in substantial dispute. By Memorandum of Agreement dated February 14, 1986, the Applicant, Cluett, Peabody Canada Inc. (hereinafter called 'Cluett' or the 'Applicant') agreed to sell substantially all of the assets of its Van Raalte Division. This necessitated a partial wind up of the Cluett, Peabody Canada Inc. Employee Retirement Plan (hereinafter the 'Plan'). In accordance with the provisions of the Act, Cluett filed with the Superintendent of Pensions a Wind Up Report (hereinafter the 'Wind Up Report') dated June 11, 1986. The Wind Up Report disclosed that after all liabilities were paid, there still remained a surplus of \$591,980.01 (hereinafter the 'surplus').

By letter dated December 22, 1986 Cluett, through its actuary, requested the Commission to approve the refund of that surplus to itself. Between that date and November 7, 1990 much correspondence was exchanged among Commission staff, Cluett, and Plan members concerning ownership of the surplus and the urgency of completing the partial wind up of the Plan. On February 8, 1988 the Government of Ontario passed legislation prohibiting the withdrawal of surplus funds from pension plans on full or partial wind up subject to certain exceptions set out in Regulation 708/87 to the Act (hereinafter the 'Regulation'). On at least two occasions efforts were made by Cluett and representatives of the Plan members to reach an agreement to share the surplus. Unfortunately, these efforts failed.

If there was any dispute as to the facts of this matter, it centred on who was responsible for the fact that by the fall of 1990 the surplus in the Plan remained undistributed. Some comment will be made on this issue later. For present purposes it is sufficient to say that by September of 1990 the Superintendent of

Pensions had made it clear to Cluett that he was concerned about delay in completing the partial wind up of the Plan and that he would compel a distribution of the entire surplus to members of the Plan should an agreement to share not be reached. This advice was contained in a letter to Cluett from counsel for the Superintendent dated August 23, 1990.

The matter was not resolved by agreement. Accordingly, the Superintendent issued a Notice of Proposal to Make an Order (hereinafter the 'Notice of Proposal') dated November 7, 1990. Under section 90 of the Act, where the Superintendent proposes to Make an Order under section 88, a Notice of Proposal must be duly served on the recipient of the Proposed Order. That person may then as a matter of right request a hearing before the Commission.

The Notice of Proposal served on Cluett was as follows:

"Proposed Order:

I propose to Order the administrator of the Plan to segregate, immediately, \$594,840, as actuarially certified at December 19, 1986, plus related fund earnings (the "Van Raalte surplus") from the Plan's surplus.

I further propose to Order the administrator of the Plan to distribute the Van Raalte surplus to entitled persons of the Van Raalte Canada Inc. Division by December 31, 1990 in accordance with subsection 12.2, section 15 and subsection 16.2 of the Plan as amended and in effect on January 1, 1962.

Reasons:

I propose to take this action for the following reasons:

- 1) The Van Raalte Division of the Plan was wound up effective January 1, 1986;
- 2) As at December 19, 1986, the Van Raalte surplus was certified as being \$594,980;
- 3) According to the Plan text as amended, and in effect January 1, 1962, surplus belongs to the participants, contingent participants and beneficiaries of the Plan;
- 4) Neither the Administrator nor the Employer has filed an application to the Pension Commission of Ontario, or initiated a court application to resolve the issue of entitlement and distribution of the Van Raalte surplus;
- 5) As at January 1, 1990, the total surplus in the Plan amounted to \$1,602,831. The Employer has been using this surplus, in part, to pay its current services costs and enhance Plan benefits;
- 6) If the Van Raalte surplus is not immediately segregated, pending distribution, it may be diminished by the Employer continuing to pay its current service costs and benefit enhancements from the Plan's surplus;
- 7) The partial wind up of the Plan cannot be completed until the Van Raalte surplus is distributed."

The response of the Applicant was contained in a letter dated December 7, 1990. First, the Applicant provided the assurance that Plan surplus was fully segregated and that no attempt had been made to use the surplus to offset funding obligations. Second, the Applicant advised that it was taking steps to commence a Court Application to resolve the question of surplus ownership. The Applicant requested confirmation that the Superintendent's concerns were satisfied by the December 7, 1990 letter, but also made it clear that if the Superintendent was not satisfied and intended to proceed with the Proposed Order, that the Applicant was formally requesting a hearing before the Commission.

The Superintendent advised the Applicant by letter dated December 12, 1990 that its December 7, 1990 letter would be treated as a request for a hearing, the date for which was later set for March 21, 1991. On January 24, 1991 counsel for the Applicant formally applied to the Commission for an adjournment of the hearing until the Court Application had been heard. After receiving written submissions from both the Applicant and the Superintendent, the Commission denied that request.

Accordingly, this matter comes before the Commission as a hearing pursuant to section 90 of the Act on the request of the Applicant, Cluett.

THE PRELIMINARY MOTION REGARDING JURISDICTION

The basis for the Applicant's attack on the jurisdiction of the Commission to hear this matter concerns the nature of the question we were asked to decide. Unlike other surplus matters this comes before us under section 88 of the Act and raises a question of proper administration of the Plan. Sections 79 and 80 of the Act dealing with employer applications for surplus withdrawal are not involved. Nevertheless it was the submission of the Applicant that the underlying issue to be determined is the question of whether Cluett or the Plan members are entitled to the surplus. With this aspect of counsel's argument we agree. The Superintendent's Proposed Order would direct the Applicant to distribute the surplus to the members in

accordance with the provisions of the 1962 Plan. Obviously, such an Order would only be appropriate if we were to find the 1962 Plan operative and that it provided for the members to have the surplus. This, we consider to be synonymous with determining ownership.

The second aspect of the Applicant's argument on the preliminary motion is that the Commission does not have the jurisdiction to decide the question of surplus ownership. We do not accept this proposition as correct.

In support of its submission, the Applicant relied on the recent decision of the Commission itself in *Otis Canada Inc. and Steel Workers Local 7062* (hereinafter *Otis*) which was released February 8, 1990. That case arose under sections 79 and 80 of the Act but we do not regard that difference as material to the proposition being advanced here. *Otis Canada* had made Application to the Commission under clause 7a(2)(c) of the Regulation for the consent of the Commission to a withdrawal of surplus amounting to approximately \$6.7 million. In order for the Commission to give such consent it had to satisfy itself that the requirements of subsection 80(4) of the Act were met, and in particular, subsection 80(4)(b) which requires the Commission to find that:

"the pension plan provides for payment of surplus to the employer on wind up of the pension plan."

In *Otis*, the Commission heard 17 days of evidence and argument directed to answering this question. Unfortunately, and uniquely to that case, no evidence was entered which could resolve the question. As the Commission said in its reasons at p.11:

"In short, there was a void in the evidence as to *Otis'* intention vis a vis the surplus and there was a void in the jurisprudence on the issue of how to deal with the silence in plan documentation."

Faced with this quandary, the Commission used its power under subsection 80(8) of the Act to require the Applicant to seek a Court Order declaring entitlement. In so doing the Commission stated, in the passage relied upon by the Applicant, at p.17 of its reasons:

"In our view it is 'necessary' in the circumstances of this case that a court determine ownership of the surplus. While the Commission is empowered to, and indeed must, make a determination as to whether subsections (a) through (d) of subsection 80(4) have been met, nowhere in the Act is the Commission given the power to determine issues of ownership. Naturally, if ownership were clear, the Commission would not force an Applicant to have the matter resolved by the courts. However, in this case, where ownership is unclear we find it necessary to attach as a condition to our consent that *Otis* obtain a declaration of ownership of surplus."

We are of the view that the Commission, in *Otis*, felt that it had no legislative mandate to choose one party over another in a surplus dispute where neither a factual or a legal basis for the choice was established. Accordingly, we reject the argument of the Applicant that the Commission lacks jurisdiction to decide questions of surplus entitlement. We note that this conclusion coincides with the general public interest mandate of the Commission to regulate and administer all aspects of pension plans.

In the case colloquially known as the *Dominion Stores* case (*Re Collins et al and the Pension Commission of Ontario et al* (1986) 56 O.R.2d 274) the Divisional Court said:

"The existence of surplus funds creates the necessity, or at least the desirability, of dealing with them. The Commission is there to ensure that plans are properly funded, not over-funded. I think, therefore, that the consideration of what to do with surplus funds of current plans is both desirable and necessary. If that is so, the absence of any reference to it in the Act is not of critical significance, nor, since there is reference to the disposition of surplus funds in the Act, can it be said that to regulate surplus funds would be contrary to the Act."

We endorse this purposive approach to the mandate of the Commission. It would be strange indeed if the legislature were to give the Commission the authority to regulate all aspects of pension plan administration, and the responsibility to consent to the payment out of surplus without the necessarily concomitant jurisdiction to decide who owns it.

THE MAIN APPLICATION

Facts

The Cluett Peabody & Co. of Canada Ltd. Retirement Annuity Plan (the original plan) was first established effective March 1, 1940. The benefits were provided under a Group Annuity Contract issued by Prudential Insurance Company. Although the Applicant was unable to locate a copy of the original plan text,

a photocopy of an employee booklet describing its features and entitled "Retirement Annuity Plan" was filed at the hearing.

The Prudential Group Annuity Contract was suspended effective January 1, 1962, and the original plan was amended, restated, and continued as the Cluett, Peabody & Co. of Canada, Ltd. Employee Retirement Plan (the 1962 Plan text). This plan was a non-contributory, final average earnings, defined benefit pension plan. The 1962 Plan text was amended from time to time prior to 1979 but none of those amendments raise significant issues.

Effective January 1, 1979, the Plan text was again amended and restated as the Cluett, Peabody & Co. of Canada, Limited Employee Retirement Plan (the current plan text). This restatement significantly altered the provisions of the 1962 Plan text. It provided that, in the event of discontinuance and after all liabilities of the Plan were paid, any surplus would revert to Cluett. The validity of this amendment was in issue before us and will be discussed later in the context of the actual provisions of the 1962 Plan. However, counsel for the Superintendent readily conceded that if we were to find the 1979 amendment valid, then the issue of ownership of the surplus must be decided in Cluett's favour. We agree.

As set out above, the Van Raalte Division was sold in February of 1986 triggering a partial wind up of the Plan. At the hearing, Mr. Neil Cameron, the actuary for Cluett testified that the Plan surplus as of December 31, 1990, amounted to \$828,406.88. A memorandum prepared by Staff of the Pension Commission dated January 31, 1991 and filed at the hearing showed that at wind up there were 37 Active Members, 4 Retirees and 3 Deferred Vested Members entitled to receive benefits under the Plan. As of the date of the hearing, and therefore prior to resolution of the surplus issue, 1 Active Member had died.

As stated earlier, there was some dispute at the hearing as to whether it was the fault of the Pension Commission Staff or the fault of Cluett that entitlement to surplus had not been resolved some four and a half years after the partial wind up report was initially submitted. Because the time delay in this case is extraordinary and because it bears on the necessity of the Superintendent's actions, we set out the chronology of events between the date of the partial wind up report (June 11, 1986) and the date of the Notice of Proposal (November 7, 1990).

On December 22, 1986, Mr. Jacques Pelletier then actuary to the Cluett Plan wrote to the Pension Commission and formally asked that approval be given to pay the surplus to Cluett. By letters dated January 16, 1987, and February 6, 1987, Commission staff advised Mr. Pelletier that the Commission would not consider that application until Notice was given to members and other persons entitled to benefits under the Plan. On April 2, 1987, Mr. Pelletier advised Commission staff that a form of Notice had been sent by letter to all members affected by the partial wind up. In response to that Notice the Commission received 11 submissions from Plan members expressing concern with the Cluett application. Cluett was advised of these submissions by letter dated May 25, 1987. In that letter Commission staff alerted Mr. Pelletier to the provisions of the 1962 Plan text which suggested that the Plan members were entitled to the surplus.

While there may have been some ambiguity in the position taken by Commission staff regarding the various options open to Cluett to resolve the dispute over surplus, Commission staff consistently took the position that the 1962 Plan text prohibited a reversion of surplus to Cluett and provided that the surplus be used for the exclusive benefit of the members. This position was expressed in correspondence to Cluett or its lawyers dated December 14, 1988, April 18, 1989, January 4, 1990, June 12, 1990 and August 23, 1990. In the last mentioned letter, counsel for the Commission advised that should the matter not be resolved by the end of September, 1990, the Superintendent would "appoint a new administrator to complete the wind up of the Plan pursuant to his powers under section 72 of the Act."

Evidence filed at the hearing disclosed that although members of the Plan were prepared to entertain settlement discussions with Cluett, they were extremely anxious to have the matter finally resolved. The memorandum of January 31, 1991, prepared by Commission Staff in preparation for Cluett's application for an adjournment reads:

"Since 1987, there have been numerous written and telephone enquiries concerning the progress made in resolving this matter. The Head of the Pension Committee who is unofficially representing the membership has made frequent contact with the staff of the Pension Commission over the period.

I received one telephone call regarding this plan on January 29th and 2 more on the 30th. The callers have also advised me that the membership will be writing to the Superintendent of Pensions (copies to Ministry of Financial Institutions and M.P.P.) in support of their claim to entitlement to surplus assets."

At the hearing three letters from Plan members to the Minister of Financial Institutions were filed. These letters document the concern and frustration of the Plan members regarding the time delay in resolving the issue of surplus ownership.

THE FIRST ISSUE

Counsel for the Applicant argued that the Superintendent did not have jurisdiction under the Act to order Cluett to distribute surplus to the members. Accordingly, we first turn our consideration to those provisions of the Act relied upon by the Superintendent.

The Notice of Proposal cites section 88 of the Act as the statutory basis for the Order. That section provides:

- 88.** - (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 90 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.
- (2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,
- (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
 - (b) that the pension plan does not comply with this Act and the regulations; or
 - (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.
- (3) In an order under this section, the Superintendent may specify the time or times when or the period or periods of time within which the person to whom the order is directed must comply with the order.
- (4) An order under this section is not effective unless the reasons for the order are set out in the order. 1987, c.35, s.88.

It was the position of counsel for the Superintendent that Cluett breached section 88 by failing to distribute the surplus in the plan. To understand this argument some other provisions of the Act should be referenced.

Section 20 of the Act imposes a general duty on Cluett as the administrator of the Plan to comply with the Act and Regulations. Where a partial wind up has occurred, the Act requires the administrator to file a wind up report which, to comply with clause 24(2)(q) of the Regulation, must contain a method for the distribution of surplus assets and, if applicable, a formula for the allocation of any surplus among Plan members. Finally, the definition of 'wind up' in section 1 of the Act states:

"wind up" means the termination of a pension plan and the distribution of the assets of the pension fund.

Notwithstanding these provisions and the overall mandate of the Superintendent to supervise the wind up of Pension Plans counsel for Cluett took the position that the Superintendent lacked the jurisdiction or regulatory power to make the Proposed Order. With this we cannot agree.

In this case the surplus has remained in the fund undistributed for some four and a half years. If the Superintendent cannot require the administrator to take actions necessary to complete the wind up of pension plans, the practical result may be unfair to Plan members. Even in those cases where surplus clearly belongs to plan members, the monetary share of a single member may not be sufficient to warrant the cost of an application to the Commission or the Courts. The loss to Plan members is real as evidenced in this case by the death of one active member before resolution of the issue.

The Applicant also takes the position that the Superintendent is without jurisdiction because the Act reserves authority over surplus to the Commission. Again, we cannot agree. Section 79 of the Act only requires Commission consent where surplus is to be paid to an employer. Regulation 7a(2)(a) allows the payment of surplus directly to Plan members where a plan is wound up. Accordingly, we find that the Superintendent has jurisdiction to make the Proposed Order.

THE SECOND ISSUE

Notwithstanding the jurisdiction of the Superintendent to make the Proposed Order, it would only be appropriate if the Plan members are entitled to the surplus in the Plan. Therefore, the crucial issue before us is: who owns the surplus?

As Zuber, J.A, said writing for the Court of Appeal in Re Reeve et al. and Montreal Trust Co. of Canada

et al. (1986) 53 O.R.(2d) 595 (at 596) (hereinafter "Reevie") concerning a factually similar controversy over surplus ownership:

"While private pension plans no doubt are generally similar, much will depend on the particular documents by which they are created. It therefore becomes necessary to set out something of the history of the pension plan which is the subject of these proceedings and at least parts of the critical documents."

The salient provisions of the Plan documents are set out below. The issues raised by these extracts are by now reasonably settled in the existing case law. They involve a consideration of the extent of the original trust declaration as well as the limitations, if any, placed on the power of Cluett, as settlor of the trust, to amend the Plan.

The only document adduced to evidence the Original Plan was an employee booklet entitled "Retirement Annuity Plan" effective March 1, 1940. This document was silent on the question of surplus but contained the following provision relating to amendments:

17. CHANGE OR DISCONTINUANCE OF THE PLAN

The Company hopes to continue the Plan indefinitely, but reserves the right to change, modify, or discontinue it any time. A change or modification of the Plan will not affect the Retirement Income purchased prior to such change or modification.

The 1962 Plan text was filed at the hearing along with a Trust Agreement made between Cluett and the Royal Trust Company as of January 1, 1962. The relevant provisions of these documents are as follows:

1962 Plan text

Section 12.1 provided:

12.1 All assets for providing the benefits of the Plan shall be held as a trust for the exclusive benefit of participants, contingent participants and beneficiaries under the Plan, and no part of the corpus or income shall be used for, or diverted to, purposes other than for the exclusive benefit of participants, contingent participant or beneficiaries under the Plan. No participant, contingent participant or beneficiary under the Plan, nor any other person, shall have any interest in or right to any part of the earnings of the trust, or any rights in, to or under the trust or any part of its assets, except to the extent expressly provided in the Plan.

Section 15 provided for amendment to the 1962 Plan text:

The Company reserves the right at any time, and from time to time, to modify or amend in whole or in part any or all of the provisions of the Plan. This right of the Company is subject to the conditions (a) that no modification or amendment may be made which materially adversely affects the benefits under the Plan of anyone receiving a retirement income whether he be a participant, contingent participant or beneficiary, and (b) that no part of assets of the Plan shall by reason of any modification or amendment, be used for, or diverted to, purposes other than for the exclusive benefit of participants, contingent participants and beneficiaries under the Plan.

Section 16 provided for discontinuation of the Plan and included the following:

The Plan may be discontinued by the Board of Directors, but only upon condition that such action is taken under the trust agreement established under the Plan as shall render it impossible for any part of the corpus of the trust or income thereon to be at any time used for, or diverted to, purposes other than for the exclusive benefit of participants, contingent participants, and beneficiaries.

The contemporaneously made Trust Agreement incorporated the provisions of the 1962 Plan text and in section 1 provided for the Trust Fund as follows:

NOW, THEREFORE, the Company and the Trustee agree as follows:-

Section 1 The Company hereby establishes with the Trustee a Trust Fund consisting of such sums of money and such property acceptable to the Trustee, as shall from time to time be paid or delivered to the Trustee, and the earnings and profits thereon. All such money and property, all investments made therewith and proceeds thereof and all earnings and profits thereon are referred to herein as the "Fund". The Fund shall be held by the Trustee in trust and be dealt with in accordance with the provisions of the Agreement. At no time shall any part of the Fund be used for or diverted to purposes other than those pursuant to the terms of the Plan.

In 1979 the 1962 Plan text was restated and amended in a significant way. The amendments are set

out below and together have the effect of providing that upon discontinuance of the Plan, surplus assets will revert to Cluett, the plan sponsor.

Section 12.1 of the 1962 Plan text was replaced by Section 10.1 of the 1979 or current plan text which reads:

10.1 Trust fund:

All assets for providing the benefits of the Plan, except as provided in Section 10.5, shall be held as a Trust Fund for the exclusive benefit of Participants, Contingent Participants and Beneficiaries, and, prior to the satisfaction of all liabilities with respect to them, no part of the corpus or income shall be used for or diverted to any other purpose. No person shall have any interest in or right to any part of the Trust Fund, except to the extent provided in the Plan.

This amendment served to limit the amount of the Fund which was protected from being diverted to the amount required to satisfy plan liabilities. Another way of describing the effect of this amendment would be to characterize the Trust Fund as only covering the assets in the plan necessary to fund plan liabilities.

Section 11.1 of the 1979 or current plan text replaced the amendment provision, section 15, of the 1962 Plan text as follows:

11.1 Right to amend:

The Company reserves the right at any time, and from time to time, to modify or amend in whole or in part any or all of the provisions of the Plan. This right of the Company is subject to the condition that no modification or amendment may be made which will materially adversely affect the benefits under the Plan of anyone receiving a retirement income whether he be a Participant, Contingent Participant or Beneficiary. Furthermore, no part of the Trust Fund shall, by reason of any modification or amendment, be used for or diverted to purposes other than for the exclusive benefit of Participants, Contingent Participants and Beneficiaries under the Plan. (emphasis added)

This amendment replaced the words "assets of the Plan" (as found in the 1962 Plan text) with the underlined words "Trust Fund". This change reflected a limited concept of trust fund so as to encompass only the amount necessary to cover liabilities. The amendment made to the section dealing with Discontinuance of the Plan provided for the first time specific authority for the reversion of surplus to Cluett. Numbered sections 12.2 and 12.3 in the 1979 current plan text, the provisions now read:

12.2 Discontinuance:

The Plan may be discontinued by the Board of Directors, but only upon condition that such action is taken in accordance with the Trust as shall render it impossible at any time prior to the satisfaction of all liabilities with respect to Participant, Contingent Participants and Beneficiaries for any part of the corpus of the Trust Fund or income thereon to be at any time used for or diverted to purposes other than for the exclusive benefit of Participants, Contingent Participants and Beneficiaries. If the Plan is discontinued, no further contributions will be made by the Company and the Trust Fund shall be allocated for the benefit of each Participant, Contingent Participant or Beneficiary, as described in section 12.3.

12.3 Allocation:

In the event of the discontinuance of the Plan, the Trust Fund shall be allocated with respect to each Participant, Contingent Participant and Beneficiary as follows:

...

(d) Fourth, any amount not required to meet in full all liabilities under the Plan shall be returned to the Company.

We now turn to a consideration of the legal questions raised by the facts adduced before us. A starting point in the determination of these issues can be derived from a quotation relied upon by the Court of Appeal in Reevie from Waters, Law of Trusts in Canada, 2nd ed. (1984), at p.291.

"A settlor cannot revoke his trust unless he has expressly reserved the power to do so. This is a cardinal rule, and it involves two important concepts. The first is that the trust is a mode of

disposition, and once the instrument of creation of the trust has taken effect or a verbal declaration had been made of immediate disposition on trust, the settlor has alienated the property as much as if he had given it to the beneficiaries by an out-and-out gift. This almost self-evident proposition has to be reiterated because it is sometimes said that the trust is a mode of "restricted transfer". So indeed it is, but the restriction does not mean that by employing the trust the settlor inherently retains a right or power to intervene once the trust has taken effect, whether to set the trust aside, change the beneficiaries, name other beneficiaries, take back part of the trust property, or do anything else to amend or change the trust. By restriction is meant that he has transferred the property but subject to restrictions upon who is to enjoy and to what degree. The mode of future enjoyment is regulated in the act of transferring, but the transfer remains a true transfer."

The evidence available about the terms of the 1940 original plan text was scant. However, we are able to conclude, significantly, that the power to amend was broad being only limited by a prohibition against modifying benefits already purchased. Accordingly, we conclude that Cluett, as plan sponsor, was entitled to amend the 1940 plan provisions to establish the 1962 Plan text. In other words, we find the 1962 Plan text to be validly enacted as at that date.

Having come to that conclusion, the question then becomes one of interpreting the terms of the 1962 Plan Trust and the breadth of the amendment power in that document. In this regard, counsel for the Applicant places emphasis on the wording of section 12.1 as demonstrated by the following underlining.

1962 Plan Text 12.1:

"All assets for providing the benefits of the Plan shall be held as a trust for the exclusive benefit of the participants..."

The submission of the Applicant is that the underlined words limit the extent of the intended trust. Since Cluett, the argument goes, only intended the assets for providing the benefits to be subject to trust, any surplus was outside the ambit of the declaration and can revert to Cluett by way of Resulting Trust.

We do not accept this interpretation of the wording in section 12.1. We agree that the documents should be viewed as a whole. In that context we are of the view that, taken together, all of the extracts from the 1962 Plan text clearly demonstrate an intention on the part of Cluett to place all the assets of the Plan irrevocably in trust for the exclusive benefit of the members. We find this intention was consistently and unambiguously expressed. As further support for this interpretation we look to the 1962 Trust Agreement. The Trust Fund is defined so as to include "all such money and property, all investments made therewith and proceeds thereof and all earnings and profits therein". In other words, all of the assets.

Counsel for Cluett submitted that we should decline to follow the Reevie case and instead accept as persuasive the approach articulated by the Court of Appeal of British Columbia in Hockin et al. v. Bank of British Columbia et al. (1990) 46 B.C.L.R.(2d) 382. These two cases, while raising identical issues in a similar factual context, reach opposite results. If we were to follow the analysis in Hockin we might well find Cluett entitled, in law, to the surplus. However, we not only accept the approach in Reevie as correct, we are also convinced that we are bound by Reevie as a decision of Ontario's highest court. As authority for the proposition we rely on Regina v. McKibbin (1981) 34 O.R.(2d) 185. Further, the trust principles and analysis employed in Reevie have recently been followed and affirmed by the Ontario Court of Appeal in National Automobile, Aerospace and Agricultural Implement Workers of Canada et al. (CAW-Canada) v. White Farm Manufacturing Canada Limited et al., released October 25, 1990.

In finding as we do that Cluett intended in 1962 to establish a trust fund composed of all of the Plan assets we adopt the conclusion of the Court of Appeal in Reevie at p.608.

"At the centre of this dispute lies the simple fact that the funds in dispute are trust funds. The settlors of the fund were the employer (Canada Dry Limited) and the employees. The Pension plan and the trust agreement provide that the contributions were irrevocable and that the beneficiaries of the trust were the members of the pension plan (i.e., the employees, spouses etc.)."

The next and inter-related question, is whether Cluett reserved to itself in the 1962 Plan text a sufficiently wide power to make the 1979 amendments. As stated above in Waters such a power would have to be expressly reserved because its exercise amounts to a partial revocation of trust. We find no such power reserved by Cluett. On the contrary, section 15 of the 1962 Plan text specifically prohibits a reversionary amendment in the following words:

"(b) that no part of the assets of the Plan shall, by reason of any modification or amendment, be used for, or diverted to, purposes other than for the exclusive benefit of participants, contingent participants and beneficiaries under the Plan."

We find that this limitation on the power of Cluett to amend the plan is effective to invalidate the amendments in the 1979 Plan text providing for a surplus reversion to Cluett. Therefore, the 1962 Plan text provisions must prevail. Based on those provisions we find that the Plan members, as listed in the June 11, 1986, partial wind up report for the Van Raalte Division, are entitled to share the current surplus in the Plan.

CONCLUSION

The Commission hereby Orders the Superintendent to carry out the Proposed Order dated November 7, 1990 directed to Cluett, Peabody Canada Inc.

Dated at Toronto this 6th Day of May, 1991.

"M. Joseph Regan"

"Donald G. Collins"

"Deborah K. Hanscom"

Released May 15, 1991.

ORDER

IN THE MATTER OF the Pension Benefits Act, 1987, S.O. 1987, c.35;

AND IN THE MATTER OF an Order of the Superintendent of Pensions under Section 88 of the Pension Benefits Act, 1987 respecting the Cluett, Peabody & Company Canada, Limited Employee Retirement Plan (Van Raalte Division)

WHEREAS A NOTICE OF PROPOSAL TO MAKE AN ORDER dated November 7, 1990 (the "Proposed Order") requiring the administrator of the Cluett Peabody & Company Canada, Limited Employee Retirement Plan (the "Plan") to segregate, immediately, \$594,840, as actuarially certified at December 19, 1986, plus related fund earnings (the "Van Raalte surplus") from the Plan's surplus and to distribute the Van Raalte surplus to entitled persons of the Van Raalte Canada Inc. Division by December 31, 1990 in accordance with subsection 12.2, section 15 and subsection 16.2 of the Plan as amended and in effect on January 1, 1962 has been duly given and served in accordance with the provisions of the Pension Benefits Act, 1987 (the "Act");

AND WHEREAS THE PROPOSED ORDER was considered by the Pension Commission of Ontario at a hearing pursuant to section 90 of the Act on the request of Cluett, Peabody Canada Inc.;

AND WHEREAS THE PENSION COMMISSION OF ONTARIO, in its Reasons for Decision dated May 6, 1991, Ordered the Superintendent of Pensions to carry out the Proposed Order;

IT IS HEREBY ORDERED that the administrator of the Plan segregate, immediately, \$594,840, as actuarially certified at December 19, 1986, plus related fund earnings (the "Van Raalte surplus") from the Plan's surplus;

IT IS FURTHER ORDERED that the administrator of the Plan distribute the Van Raalte surplus to entitled persons of the Van Raalte Canada Inc. Division by July 2, 1991 in accordance with subsection 12.2, section 15 and subsection 16.2 of the Plan as amended and in effect on January 1, 1962.

I am making this Order for the following reasons:

- 1) The Van Raalte Division of the Plan was wound up effective January 1, 1986;
- 2) As at December 19, 1986, the Van Raalte surplus was certified as being \$594,980;
- 3) As at January 1, 1990, the total surplus in the Plan amounted to \$1,602,831. The Employer has been using this surplus, in part, to pay its current services costs and enhance Plan benefits;
- 4) If the Van Raalte surplus is not immediately segregated, pending distribution, it may be diminished by the Employer continuing to pay its current service costs and benefit enhancements from the Plan's surplus;
- 5) According to the Plan text as amended, and in effect January 1, 1962, surplus belongs to the participants, contingent participants and beneficiaries of the Plan;
- 6) The partial wind up of the Plan cannot be completed until the Van Raalte surplus is distributed.

DATED at Toronto, Ontario, this 16th day of May, 1991.

"Robert H. Hawkes"

Superintendent of Pensions

Applications Approved Since March, 1991

Applications Approved Under Clause 7a(2)(c) of the Regulation and Subsection 79(1) of the PBA, 1987 - Request for Return of Surplus Pursuant to a Court Order

At the Commission meeting held May 23, 1991, the Commission consented to filing with the court a consent pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(c) of the Regulation to the refund of plan surplus.

(a) The Retirement Plan for Salaried Employees of LaSalle Machine Tool of Canada, Limited (C-12096)

Refund of plan surplus to LaSalle Machine Tool of Canada Limited amounting to \$136,574.25 as at June 1, 1990 plus investment earnings thereon to the date of payment less legal fees conditional upon a plan amendment that permits payment out of surplus upon plan termination, in accordance with the court order dated April 29, 1991, being registered by the Superintendent of Pensions.

(b) Sulpetro Limited Employees Retirement Plan (Alberta Registration C-42395)

Refund of plan surplus to Sulpetro Limited, in Receivership, amounting to \$145,690 as at March 1, 1991 plus investment earnings thereon to the date of payment.

(c) Pension Plan for Employees of Blue Bell Canada Inc. (C-12115)

Refund of plan surplus to Lee Canada Inc. amounting to \$185,250 as of December 31, 1990 plus investment earnings thereon to the date of payment less one half of plan expenses for the period after December 31, 1990. This consent is effective May 30, 1991 on the following conditions: 1) that no objections are received on or before May 30, 1991; and 2) that if all the benefit payments have not been completed by the date the court authorization to distribute the surplus is obtained, the funds required to pay the outstanding benefits and any interest thereon will be held in a trust fund for the sole and exclusive benefit of the beneficiaries or their heirs or executors or the benefits will be purchased from an insurance company with portability options.

(d) Pension Plan for Salaried Employees of Certified Automotive Products (Centre) Limited (C-14085)

Refund of plan surplus to Lear Siegler amounting to \$248,291.38 as of March 31,

1991 plus investment earnings thereon to the date of payment subject to the Superintendent's approval of a final itemized listing of actual fees and expenses incurred with respect to the wind up and the filing by the Superintendent of a plan amendment made in accordance with the Court of Appeal Order dated March 28.

Applications Approved Under Clause 7a(2)(b) of the Regulation and Subsection 79(1) of the PBA, 1987 - Surplus Withdrawal on Wind Up

At the Commission meeting held March 27, 1991, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

(a) Improved Retirement Plan for Employees of NSP Investments Limited and Associated Companies (C-6662)

Refund of plan surplus amounting to \$928,641 as of December 31, 1989 plus investment earnings thereon to the date of payment.

At the Commission meeting held April 25, 1991, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

(a) National Business Systems Inc. Staff Pension Plan for Employees (C-16177)

Refund of plan surplus amounting to \$23,257 as at January 31, 1986 plus investment earnings thereon to the date of payment.

Commission Stay of Decision: A Stay of this Decision was ordered by the Commission at its meeting held May 23, 1991 pending further information.

(b) Sybron Canada Limited for Employees of its Taylor Instrument Division (C-4652)

Refund of plan surplus amounting to \$332,800 as at January 1, 1991 plus investment earnings thereon to the date of payment, subject to the Superintendent's approval of the wind-up expenses.

At the Commission meeting held May 23, 1991, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

(a) The Retirement Plan for the Employees of Timmins Automotive Limited (C-15767)

Refund of plan surplus to Timmins Automotive Limited amounting to \$43,382 as at October 1, 1986 plus investment earnings to the date of payment to the employer.

(b) Pension Plan for Employees of Collins Safety Inc. (C-100756)

Refund of plan surplus to Collins Safety Inc. amounting to \$15,313 (\$34,346 less \$19,033 surplus attributable to Quebec members) as at October 1, 1988 plus investment earnings thereon to date of payment.

(c) Pension Plan for Designated Employees of Folan Holdings Inc. (C-15761)

Refund of plan surplus to Folan Holdings Inc. amounting to \$50,064 as at November 30, 1989 plus investment earnings thereon to date of payment.

Applications Approved under Clause 7a(2)(b) of the Regulation and under Subsections 79(1) and 64(8) of the PBA, 1987 - Surplus Withdrawal on Wind Up and Request for Return of Member Contributions

At the Commission meeting held March 27, 1991, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and Regulation 7a(2)(b) thereunder to the refund of plan surplus plus interest to the employer, as applicable to each individual pension plan on the understanding that an amount equal to the refund has or will be paid by the employer to the member; and pursuant to subsection 64(8) of the PBA, 1987 for the refund of member required contributions plus interest to date of distribution, as applicable to each individual pension plan:

(a) Burns Fry Limited - Sole Member Pension Plans

Registration Number	Application for Commission's Consent	
	79(1)	64(8)
C-100592	\$59,031	\$27,113
C-100827	—	—

Applications Approved under Subsection 64(8) of the PBA, 1987 - Requests for Return of Member Contributions

At the Commission meeting held March 27, 1991, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

(a) The Retirement Pension Plan for the Employees of Rochdale Credit Union Limited (C-3745)

Refund of member required contributions in the amount of \$140,798 adjusted for interest to the date of payment.

(b) Noranda Forest Inc., Fraser Operations, Non-Union Pension Plan (C-23069)

Refund of member required contributions in the amount of \$215,164 as at December 31,

1989 plus interest to the date of payment.

(c) The Retirement Benefit Plan for the Employees of ERICO Canada Inc. (C-14241)

Refund of member required contributions in the amount of \$80,000 as at January 1, 1991 plus credited interest to the date of payment.

(d) Retirement Plan for Salaried Employees of Emery Chemicals Ltd. (C-9207)

Refund of member required contributions in the amount of \$35,678 as at January 1, 1990 plus credited interest to the date of payment.

At the Commission meeting held May 23, 1991, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

(a) Pension Plan for Employees of Honda Canada Inc. (C-12135)

Refund of member required contributions in the amount of \$1,678,093 as at April 1, 1989 plus credited interest to the date of payment on the condition that the employer will fund any deficit resulting from the refund to Class 1 members, as calculated by a valuation completed at April 1, 1991, in one lump sum prior to or at the time of the refund and that a similar funding arrangement will be put in place if a refund is negotiated for Class 2 members effective February 1, 1992.

Application Approved Under Section 106 of the PBA, 1987 - Request for Extension of Time for Filing Actuarial Report

(a) Ontario Teachers' Pension Plan

At the Commission meeting held May 23, 1991, the Commission, pursuant to section 106 of the PBA, 1987, consented to an extension of time to June 30, 1991, for the Ontario Teachers' Pension Plan Board to file their actuarial report.

Superintendent's Decisions

Notices of Proposal to Make an Order

The Superintendent issued a Notice of Proposal to Make an Order under subsection 90(5) [Notice of Proposed Wind Up Order] of the PBA, 1987 dated May 8, 1991 for the following pension plans:

(a) Pension Plan for Salaried Employees of Ontario Wire and Steel Corporation (C-100142).

(b) Pension Plan for Hourly Employees of Vinylink Corporation (C-100893).

(c) Marshall Refrigeration Co., Limited Manufacturers Life Contract No. GN 71915 Pension Fund for Regular Employees (C-221).

(d) Wallace-Davey Industries Limited Employees Pension Plan (C-10973).

(e) Moulard Courier Inc. Canada Life Contract No. P32199 Group Pension Plan (C-18603).

(f) Pension Plan for Employees of CEK/RDI Manufacturing Limited (C-103460).

The Superintendent issued a Notice of Proposal to Make an Order under subsection 90(2) [Notice of Proposed Order] of the PBA, 1987 dated May 27, 1991 for the following pension plan:

(a) Pension Plan for Certain Unionized Employees of Steinberg Inc. (C-26712).

Orders

The Superintendent issued an Order under section 70 [Wind-Up Order] of the PBA, 1987 dated April 10, 1991 for the following pension plans:

(a) Leigh Instruments Limited Employees' Pension Plan (C-9040).

(b) Frequency Control Division of Leigh Instruments Limited Employees' Pension Plan (C-530).

The Superintendent issued an Order under section 70 [Wind-Up Order] of the PBA, 1987 dated April 29, 1991 for the following pension plan:

(a) Retirement Plan for Employees of Cygnus Industries Inc. and its Divisions.

The Superintendent, pursuant to the decision of the Commission dated May 6, 1991, issued an order under section 88 of the PBA, 1987 dated May 16, 1991 for the following pension plan.

(a) Cluett, Peabody & Company Canada, Limited Employee Retirement Plan (Van Raalte Division).

Reminder to Administrators

Administrators are reminded that it is their responsibility to make plan documents available to members when requested (see section 30 of the PBA, 1987).

Even if plan documents are not readily accessible because they are at an office outside Ontario or Canada, the Administrator must obtain them for the member.

Appointment of Administrators

PURSUANT TO section 72 of the PBA, 1987, the Superintendent of Pensions has appointed Administrators to wind up the pension plan(s) of the following companies. These Administrators were appointed owing to the insolvency of the companies.

The Superintendent will appoint outside Administrators from an established roster where the matters are complex or there are a large number of pension plan members involved.

Company	Administrator	Date of Appointment
Harding Carpets division of Clarus Corporation	Superintendent of Pensions	04/04/91
C & C Yachts Limited	Superintendent of Pensions	04/05/91
Industrial Models (1979) Limited - Executive Plan	Superintendent of Pensions	04/05/91
Industrial Models (1979) Limited - Employee Plan	Superintendent of Pensions	05/08/91
Marshall Refrigeration Company Limited	Superintendent of Pensions	05/08/91
Moulard Courier Inc.	Superintendent of Pensions	05/08/91
Research Development Industries Limited	Superintendent of Pensions	05/08/91

Brochures Still Available

The March, 1991 issue of the Bulletin enclosed a pop-up order form to obtain up to 50 free copies of the PCO's brochures.

We received an overwhelming response to this coupon — but we still have quantities of all brochures available. Please call Lynn Barron at 972-5825 to order a supply (repeat orders welcome).

The Pension Commission - Committed to Your Retirement Future

A 5-page brochure describing the mandate and function of the Pension Commission of Ontario. Available in English and French.

How Pension Reform Affects Your Retirement Future

A 12-page brochure explaining many pension reform issues affecting employer-sponsored pension plans. This brochure is especially important for pension plan members. Available in English and French.

Retirement - Your Responsibility

A 5-page brochure emphasizing the importance of retirement financial planning. Available in English, French, Italian, Portuguese, Chinese and Greek.

Retirement Planning - Key Questions

A 12-page brochure which asks and answers many of the common questions concerning federal pension programs, employer-sponsored pension plans and retirement savings products. Available in English, French, Italian, Portuguese, Chinese and Greek.

Reminder to Administrators

The PCO information technology plan is approaching a pivotal stage in the development process. Conversion of the data in the Queen's Park mainframe computer to the PCO's mini-computer will be underway in the near future.

To facilitate the conversion project, the PCO will be advising Administrators of delinquent filings for:

- Annual Information Returns;
- Pension Benefit Guarantee Fund Assessments;
- Auditor's Report;
- Unaudited Financial Statements; and
- Investment Policy Returns

PCO staff may also request additional information and fees related to the filings of the above-noted documents.

We would appreciate your assistance to ensure that all your filings are complete, accurate and up-to-date, and that you advise the PCO of any deficiencies or respond promptly to staff requests for information or fees.

Your co-operation will greatly support the transition and our efforts to serve you better with the new information technology.

Contacts for Policy Areas and Enquiries

Actuarial	Teck Go	972-5799
Annual Information Returns	Rose Ann Drakes	972-5782
Communications	Judith Chalmers	972-5800
Freedom of Information Requests	Ken Doiron	972-5798
General Enquiry - Secretariat	Lynn Barron	972-5825
Policy Issues	Jerry Williams	972-5826
Mailing List	Lynn Barron	972-5825
PCO Bulletin/Compliance Assistance Guidelines	Judith Chalmers	972-5800
Pension Benefits Guarantee Fund (Administration)	Margaret Fennell	972-5785
Plan Registration-Forms		972-5784
Registrar/Secretary to the Commission	Mary Crocker	972-5815
Statements of Investment Policies & Goals/Investment Policy Returns	Jules Huot	972-5821

Contacts for Plan-specific Enquiries

Plan-specific enquiries and submissions should be directed to Pension Officers, Pension Plans Branch:

Type of Plan or Submission	Alpha Range	Pension Officer	
<u>On-going Defined Benefit Plans</u> (also includes partial wind ups, sales, mergers and conversions)	A-D E-M N-R S-Z	Jaana Pringi Cynthia James Rosemine Jiwa-Jutha Mark Henry	972-5761 972-5817 972-5816 972-5777
<u>On-going Defined Contribution Plans</u> (also includes partial wind ups, sales mergers and conversions)	A-J K-Z	Bill Qualtrough Elizabeth Carter	972-5762 972-5774
<u>Multi-employer Plans</u>	All	Bill Qualtrough	972-5762
Restated Plan Documents	All	George Bahrynowski	972-5773
Full Wind Ups	All	Jai Persaud	972-5760
Surplus Applications	All	Robin Gray	972-5775
Insolvencies	All	David Gordon	972-5824

Are You On Our Mailing List?

Owing to mailing and production costs the PCO anticipates **not** sending future Bulletins and Compliance Assistance Guidelines to our mailing list of registered pension plans indefinitely (you are on this list if the mailing label shows your plan's provincial registration number).

If you would like to be on our supplementary mailing list to continue to receive the PCO Bulletin and Compliance Assistance Guidelines please write, or fax Lynn Barron at 963-9585 or call directly at 972-5825.

The PCO Bulletin is published by the Pension Commission of Ontario, 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2 (416) 963-0522 fax (416) 963-9585

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THE PENSION COMMISSION OF ONTARIO BULLETIN

November, 1991

Vol. 2, Issue 3

The Public Forum on Pensions - Increasing Retirement Income Coverage



THE TWO DAY Forum held on September 26 and 27 at the Sheraton Centre Hotel in Toronto was attended by over 220 people with various interests in the future of the retirement income system in Canada. The public forum was designed "to foster and encourage productive dialogue among all parties involved in retirement income programs and to engage participants actively in a forum for developing appropriate retirement income strategies for the '90s".

The Forum succeeded in its objective with one qualification. Certainly, everyone agreed that increasing the quality and extent of retirement income coverage is a desirable goal. However, consensus was not reached by attendees on appropriate strategies in the '90s to achieve the goal, although many speakers offered suggestions. For this reason, we will continue to keep the coverage discussion at the forefront in future issues of the Bulletin.

It is to be hoped that the conference will help create an atmosphere wherein all those concerned will attempt to devise appropriate strategies to benefit as many as possible.

The organizers planned sessions to ensure full discussion of contentious issues and panellists generally reflected diverse viewpoints.

After welcoming and opening remarks from **Terry McLeod**, Canadian Pension Conference (CPC) and chairmen of the sponsoring organizations (**Paul Lewis** for the CPC, **Ron Hesford** for the Canadian Association of Pension Supervisory Authorities (CAPSA) and **Paul McCrossan** for the Canadian Institute of Actuaries (CIA)), the conference got underway. The following are some session highlights.

Laurence Coward, the first Chairman of the Pension Commission of Ontario in 1963 and a Mercer's partner launched the first session with an examination of *The Retirement Income System in*

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Canada. From a historical perspective he identified evolution not as steady progression but as waves of change. He compared the objectives and recommendations of the National Pension Conference in 1981 to the legislative environment existing today, noting that improvements had been attained in the areas of vesting and portability, coverage through inclusion of part-timers and shorter eligibility periods, spousal protection as a result of pensions being on a joint and survivor basis and pensions not ceasing on remarriage. However, inflation protection has not been legislated.

He noted the influence in addition to demography and inflation, of the trend to consumerism — the ever-rising expectations of the public as to quality of products and services. As applied to pensions the expectation is now that there must be no losers, regardless of the circumstances of the employee. Hence, there must be ample termination, disability and death benefits. Employers' discretion is greatly reduced and ambiguities in plan documents must be resolved in favour of the individual. He concluded his remarks by forecasting, based on the historic 15-year cycles, that the next wave of pension reform could be expected around the year 2006.

Ray Koskie, Q.C. compared global retirement income programs. He suggested that with the rise of the modern welfare state was a promise of a social security net to protect citizens from the cradle to the grave. The ability of an industrialized nation to achieve this objective varies and depends in part on its institutional framework. He noted that increasingly job transfers across national borders make the pension promise more difficult to fulfil when needed. Mr. Koskie commented that his comparison of various national schemes showed little commonality among them. He then discussed some global trends including the aging and changing composition of workforces and finite state resources.

Karen Maser, Chief, Pensions Section of Statistics Canada, summarized changes in number and types of pension plans and coverage changes by age, income and firm size through the eighties. National pension coverage is 37 per cent of the total workforce.

Those without coverage tend to have annual incomes under \$20,000, are not included in unions or collective agreements, work for companies with fewer than 100 employees and work in the retail and wholesale trade sector.

The midmorning workshop *identified problems and obstacles to achieving broader coverage*. Chaired by **Rob Brown**, professor in the Actuarial Science Faculty, University of Waterloo, it consisted of a panel followed by discussion groups and their reports. With many provincial and federal regulators in attendance, this lively session provided an opportunity for participants to air their concerns about legislation and regulation to officials.

Frank Speed, Vice President of the Canadian Life and Health Insurance Association reported that insurance suppliers are equally active in the personal and group RRSP market and the pension market. He noted considerable erosion in the defined benefit and contribution plans area with explosive growth in the personal and group RRSPs area. He called for greater clarification of the concept of coverage suggesting an essential element in its definition be tax assistance. One of the key issues is the large unit administration costs arising from pension and tax legislation and regulation which in turn, prohibits establishment of plans by smaller companies.

Sym Gill, Research Department with the Canadian Auto Workers, said that his experience has been productive in the area of extending

***Statistics Canada Update on Pensions**

FROM JANUARY, 1986 TO JANUARY, 1990;

- the number of employer pension plans dropped from 21,094 to 19,956; membership increased from 4.7 to 5.1 million
- the number of small plans (those with less than 15 members) declined from 12,714 to 10,762; these plans cover only about 1% of all plan members
- the number of larger plans (with 100 or more members) was up very slightly; these plans cover about 95% of total membership
- although the number of defined contribution plans decreased by over 1,000 (to 11,443), the members of these plans increased 32%. Members of defined contribution plans represented 8.4% of all plan members in 1990
- the number of defined benefit plans was relatively unchanged; membership in these plans grew by 8%
- there was a 44% increase in the number of women belonging to employer pension plans in the 1980s

coverage noting as an example the establishment of MEPPs in unstable employment areas such as the fisheries industry. He also noted that a disincentive to the provision of pension plans to low income workers is that such pension income has the effect of reducing the Guaranteed Income Supplement.

Brian Gibbings, Vice President and Treasurer of Southam Inc. pointed to people's lifestyles



and personal priorities as a reason for defined benefit plans now having broader appeal. Younger employees like Group RRSPs and personal RRSPs since these afford greatest flexibility and mobility. Where pensions are concerned, he said that a challenge to consultants and employers was to provide practical solutions to ensure portability of pensions benefits. According to Gibbings, the prospect of indexing is fraught with uncertainty for plan sponsors. He added that experience in the US indicated a souring on the defined contribution plan as the preferred plan design because of lacklustre investment performance and a swing back to defined benefit plans.

John Cumberford, Superintendent of the Pension Commission of Manitoba, reported on developments at the CAPSA meeting held earlier in

the Department of Finance in Nova Scotia, reiterated some of the barriers expressed by other panellists and noted that in a recessionary business environment and because establishment of pension plans is not mandatory, employers are reluctant to take on the long-term commitment a pension plan represents. He cited public attitudes and perceptions about pensions and general lack of understanding for the need for retirement financial planning as being a very real barrier to extending coverage.

The afternoon session chaired by **Priscilla Healy**, Director, Pension Commission of Ontario dealt mainly with surplus and related topics. The session covered the views of large plan sponsors, regulators in Quebec and Ontario and a paper by the CIA Task Force on Pension Surplus was presented.

Yves Slater, Director of Pension Plans at the Régies des Rentes du Québec described their long process of consultation on reform proposals affecting surplus entitlement in pension plans. In December, 1990 the Quebec government released a consultation paper proposing a method to establish sharing of surplus between the employer and employees, retired members and deferreds. Proposals were made for sharing methods in both contributory and non-contributory plans, and prescribed actuarial assumptions to be used to determine surplus available for distribution in on-going plans. The proposal also required surplus distribution calculations in any of several events, such as plan mergers, conversions, splits, benefit improvements and on a lifting of the surplus withdrawal moratorium. The proposals were later withdrawn, however, because of criticism from many quarters. Quebec is currently looking for other methods of resolving the surplus ownership debate.

Ross Peebles, Superintendent, Pension Commission of Ontario reviewed evolution of the current regulatory environment. He pointed out that much of the current pension legislation developed as a result of plan sponsor abuse of surplus. He acknowledged the concern of the pension industry with over-regulation but noted the experience of the PCO with the apparent disregard by some plan sponsors of the legitimate interests of plan members.

Brian Gibbings, again speaking from the point of view of the plan sponsor, felt that surplus is an illusory concept and should not be given to the plan members. Assets and their effective management should secure the promised benefits — and employers have in the past entered into the pension agreement in good faith based on this premise. The courts seem willing to recognize management's rights to financially manage the asset/liability equation in changing economic circumstances. **Sym Gill**, speaking from labour's perspective, felt that surplus should not be re-

Proportion of employed paid workers covered by employer pension plans in 1989:

- overall coverage rate for those 16 years of age and older was 45%, down from 47% in 1984
- coverage rate for men and women in their early twenties was about 24%
- coverage for men 35 years and older was about 65%
- coverage for women 35 and older was much lower (less than 50%)
- 15% of persons working for companies with fewer than 20 employees were covered
- 57% of persons working for companies with 100 to 499 employees were covered
- 72% of persons working for companies with 500 or more employees were covered
- those with incomes of under \$20,000 had a coverage rate of 27%
- 82% of those with incomes in the \$40,000-\$50,000 range were covered
- coverage dropped off for those with incomes over \$50,000 (perhaps because they opted for alternate retirement savings mechanisms)

* CPC Conference Presentation by Karen Maser, Chief, Pension Section, Statistics Canada

the week and confirmed that consensus was reached on developing a framework for national plan sponsors to comply with the law in the jurisdiction of registration, regardless of where members reside. Such an initiative, if implemented, would contribute to eliminating frustrating layers of public and private administration.

Percy Fleet, Superintendent of Pensions with



garded as a type of windfall that the employer can expect when he terminates the pension plan or terminates business. The pension plan is a compensation package established for the benefit of employees, and the employees should ultimately be the beneficiaries of any resulting surplus.

The first public presentation of a proposed position paper by the Canadian Institute of Actuaries was presented by **John Christie**, Chairman of the CIA's Task Force on Pension Plan Surplus. He noted that the CIA's position paper voiced the CIA's professional views and its recommendations.

The CIA paper expressed the view that priority must be given to the further expansion of the Canadian retirement income system; however, in order to lay the groundwork for such expansion, the fundamental nature of the pension promise must be examined. Because surplus is created as a result of unforeseen positive economic conditions and conservatism in setting actuarial assumptions (items over which plan members have no control or influence), the logical recipient of pension plan surplus should be the party who bears the financial risk — the plan sponsor.

The CIA felt that although no single, clear solution to the surplus controversy exists, the parties to each plan should have a window of opportunity to reach their own explicit agreement on the treatment of surplus. It was recommended that pension plan documents and communications materials clearly specify the treatment of surplus in both ongoing and terminating situations. Also, terms of the pension plan ought not be overridden by legislation, and that legislation not impose conditions on established agreements. The paper concluded that these recommendations, combined with existing funding requirements, are sufficient to protect plan members' interests.

The Friday program was designed to focus on strategies for the '90s to reach those not covered by pension plans. This was achieved through sessions on the roles of the individual, labour, employer and government.

Dian Cohen, a well-known contributor to the business press and former Business Editor at CTV challenged participants to confront the changing reality of the workforce and devise creative solutions for the present and future — not to waste energy on faulty ideas about the workplace of the past. She felt that prosperity is assured by competition and mastering of human relations. Management must get on with the job and governments can help the most by getting out of the way.

Ellen Roseman, Money Editor at the *Globe and Mail's Report on Business* suggested that Canadians were more optimistic about retirement prosperity than they had a right to be. Babyboomers are getting into the retirement savings game later in life and have less time to accumulate wealth. Business can help individuals by providing per-

sonal and retirement financial planning.

Lillian Morgenthau of the Canadian Association of Retired Persons described the active lifestyles of the aging population. **Doris Anderson**, a prominent public figure in the women's movement said today's statistics reveal three out of four women over the age of 65 and living alone live in poverty. Both speakers pointed out that today's senior can expect to live for twenty to thirty years after retirement, and women even longer. The future impact of these types of numbers on Canada's economic and social resources will be staggering. The solution, in part, can be found in the federal government's improvement of CPP and a focus on the treatment of seniors as a whole. Another aspect of the solution is to allow women to accumulate pension credits by enabling their active participation in the paid work force on the same basis as men.

Dick Martin, Executive Vice President of the Canadian Labour Congress spoke about the shift from employer-sponsored to union-sponsored pension plans and suggested that by investing pension assets in projects using unionized labour they were assuring job creation and good investment return. **Cliff Evans**, Canadian Director of the United Food and Commercial Workers Union and one of the CLC's General Vice Presidents emphasized that the number of MEPPs is increasing and is an excellent solution to the coverage problem. He supported the flat benefit plan as a means of equalizing pensions of men and women because it is based on hours worked rather than salary.

Some interesting solutions were proposed by **John O'Grady**, former Research Director of the Ontario Federation of Labour. He felt that there were five routes to expanded coverage: expansion of CPP (which he endorsed), mandatory individual RRSPs (as proposed by the Haley Commission), employer-sponsored group RRSPs or money purchase plans, employer-sponsored defined benefit plans and expanded use of MEPPs. He argued that there is social value in the defined benefit plan but that employers no longer had an incentive to establish such plans. Indeed, he felt that many employers would prefer to wind up their defined benefit plans. Expansion of defined benefit plans would depend on expanded use of MEPPs. He felt that government and unions should jointly frame a strategy to accomplish this goal.

The role of plan sponsors in the coverage issue was examined through the review of a large corporation, small business and non-profit organization. **Judith Andrew**, Director of Provincial Policy with the Canadian Federation of Independent Business (CFIB) noted that almost seventy-six percent of Canadian businesses have fewer than five employees. A 1981 study by the CFIB revealed that eight-four per cent of all employees in CFIB member firms have some measure of retirement



provisions in place; however, only twenty-four percent of employees are in registered pension plans. She noted that with the decline of larger businesses the emphasis must be placed on the financial community to develop innovative products for small businesses. She pointed out that smaller firms are demanding flexibility, cost-effectiveness, and minimal administrative burden in their pension plans.

David Crack, Director of Finance and Administration at the Law Society of Upper Canada conveyed his satisfaction with his organization's defined contribution pension plan. He felt that pension plans will only continue if the business of the sponsor remains viable.

David French from Sears Canada presented a compelling case from the point of view of a large corporation in support of the defined benefit plan design. In his view, defined benefit plans respond to the needs of people better than any other plan. Encouraging member awareness and knowledge through participation on the pension committee has two advantages: it provides valued feedback for improvement or modification to the plan while including members in its management. Monitoring the retiree's level of satisfaction with the pension plan also guides the pension committee. However, he expressed concern that the complexity and cost of defined benefit plans might be a strong deterrent to employers in establishing and maintaining them.

The final session of the Forum dealt with the role of government in expanding pension coverage. **Robert Hammond**, Deputy Superintendent with the Office of the Superintendent of Financial Institutions (OSFI) acknowledged the desire for uniformity, and announced OSFI's intention to adopt the "prudent person" approach to investing. The adoption of this approach will not only simplify compliance in the federal jurisdiction, but will also create uniformity with the legislation of several other provinces.

Superintendent of Pensions for Alberta, **Emilian Groch**, remarked on workplace trends which show that there is a definite shift from a resource to a knowledge-based economy. He noted that there is pressure for national and international harmonization of workplace issues, and that legislation must be flexible enough to allow innovations in plan design.

Paul McCrossan, President of the CIA was uniquely qualified to speak to the role of government having been elected and twice re-elected as federal member of parliament. McCrossan offered informed analysis of external and internal factors shaping the present retirement income system in Canada.

He suggested that government ought to be realistic about what and how much it regulates. Pension plans represent a leap of faith on the part of the plan sponsor and need a viable framework

for the long-term. He stated that consultants are ready to assist government to develop a new pension order; governments and regulators across Canada should step back and assess how to better co-ordinate their actions to reintroduce a viable private pension system. He proposed that the pension authorities create a "safe harbour", a simplified set of conditions (not compulsory) that if complied with would guarantee approval of all authorities.

The PCO had particular interest in this conference as it appeared to be an invaluable opportunity for professional associations to meet to discuss the many issues surrounding pension coverage. This conference presented an exhaustive view of the barriers to coverage from the standpoint of the various stakeholders in the pension system.

The barriers noted under the categories of complexity and cost were somewhat predictable; but the emphasis put on communications issues — lack of awareness among the general public, lack of understanding by plan members — presents challenges that everyone in the pension process can tackle. The PCO has initiated a public awareness program and we will be expanding our efforts in this area to accommodate the communications need. At the same time we realize that good ideas can come from anyone in the pension field; with more events like this Forum we can begin to meet the challenges together.

In the next issue of the Bulletin we will publish and examine the barriers to coverage discussed in Rob Brown's session with a view to developing some solutions.

Forum Generates Response

THE CONFERENCE was designed to involve everyone with an interest in the future of the retirement income system in Canada. Our hope also was to stimulate participation and elicit ideas from registrants at the Conference. The office of the Minister of Financial Institutions and the Pension Commission of Ontario are receiving thoughtful ideas and follow-up responses as a result of the conference. The main area of comment is on simplifying pension plans and regulation.

We believe it is vitally important to the future of the retirement income system to keep the discussion alive and to encourage the expression of ideas of individuals and companies in associated industries.

Watch future issues of the *Bulletin* for more on retirement income and pension coverage.

Excerpt of a Speech by the Honourable Brian Charlton, Minister of Financial Institutions

THE FOLLOWING is a luncheon address given by the Honourable Brian Charlton, Minister of Financial Institutions to the Public Forum on Pensions, "Increasing Retirement Income Coverage — Meeting the Challenge" on September 26 at the Sheraton Centre, edited to focus on the highlights.

The discussion on meeting the challenge of increasing retirement income coverage is of great concern to our government, and to all of us. The government recognizes that the directions taken now will affect the ability of thousands of people to retire with economic security.

As we all know, certain basic coverage is available to everyone through the Canada Pension Plan, Old Age Security and so on. Some people also rely on personal savings, RRSPs, or private pension plans. But how well covered are most Ontarians?

Fewer than 40 per cent of Ontario's workers are now members of company-sponsored pension plans. In fact, Statistics Canada shows that while membership in employer-sponsored pension plans grew by 14 per cent between 1980 and the start of 1990, there was a 20 per cent rise in the labour force during the same period. Obviously, the figures point to a declining trend in the number of members in defined benefit plans.

Both government and those in the pension community must question how we are going to meet the challenge of increasing retirement income coverage to the many diverse groups of people not covered by employment pension plans.

In meeting the retirement needs of any given worker we have to start planning early — remember that for an individual to accumulate adequate retirement savings, it could take 30 to 35 years of employment. One vital way of addressing future retirement security is through ensuring that people have jobs. Ontario now faces its most serious challenge since the great depression. And our priority as a government during this session of the legislature must focus on economic renewal. Unemployment is far too high. We have lost thousands of permanent jobs.

Getting Ontario out of this serious recession will be the focus of many of our initiatives. Training, retraining and investing in one of our greatest resources — people — will be important in achiev-

ing this goal. In today's economy people can no longer expect to stay employed in one job for their adult life. More people are having to make career changes many times in their lives.

All of this is inter-connected. These elements — jobs and pensions — are pieces of a puzzle that fit together and contribute to a healthy community and a healthy economy. This is why it is so important, through creative activity and planning involving both employees and employers, to find solutions to this pension coverage problem.

Earlier this summer I had the opportunity to attend the founding meeting of the Unionized Pension Investment Corporation. UPIC consists of a number of jointly-trusted and union-trusted pension funds in the construction sector, which have pooled money to invest in real estate construction projects. This means pension money is being invested so that jobs can be created for plan members and others. At their initial meeting, members of UPIC already had approximately \$14 to \$15 million in pension funds committed.

Members of UPIC have seized an opportunity to plan today for tomorrow. They have forged partnerships which invest in both today's economy and in jobs for tomorrow. As you know, this government feels strongly that partnerships are essential among all segments of society, especially among employees and employers.

UPIC's projects are important for another reason: they exemplify the wisdom of workers investing in their retirement future. UPIC has recognized that the stakes are high and repercussions will be felt in the future unless solutions are found. This is only one example of a group coming up with solutions — and implementing them.

A survey conducted earlier this year by Gallup Canada showed that Canadians have great expectations about their financial future. In fact, figures showed that by the year 2001, more than one-third of Canadians now between the ages of 18 and 29 expect to own their own home, have up to \$100,000 salted away in savings and earn between \$50,000 and \$100,000 a year. The survey also found that while 74 per cent of people under age 50 said they planned to make regular contributions to mutual funds or other investments to supplement their pensions, only 37 per cent actually did. Even among those already earning in excess of \$70,000 per year, less than one in three acknowledged making an investment contributions of between \$5,000 and \$10,000.

It is encouraging to see that even in these current economic times people can be optimistic. However, even in booming times, aspirations such as those reflected in the survey are somewhat unrealistic. Research shows that many people without company pension plans start earnestly saving

for their retirement after they reach the age of 50; many years too late to reach the lofty goals previously noted.

Everyone in the pension business will agree that paying into a private pension plan during the course of one's working life is an easy and desirable way of ensuring some measure of financial security in retirement. But it must be remembered, fewer than half of Ontario workers can presently do this. That's why the input of everyone concerned is so vital.

Various solutions which already have been proposed: improvements in the Canada Pension Plan, mandatory employment pensions, expanded use of multi-employer pension plan and simplified regulations and reporting requirements to make pension plans more attractive. No doubt many other suggestions will be forthcoming, and no doubt arguments, both for and against these solutions, can be made.

There is one thing, however, which both the private sector and government can agree upon — that we all can play an important role in educating people about retirement planning and can actively encourage and facilitate the creation of more employment pension plans.

SIP&Gs Required to Reflect Asset Mix Shift Because of Change in Foreign Content Rule

THE 1990 FEDERAL

budget, tabled in the House of Commons on February 20, 1990 as Bill C-28, proposed a measure allowing for the gradual increase of the foreign property content of pension funds from the prevailing 10% to 20% at the rate of 2% per year from 1990 to 1994. The Bill has yet to be passed, but it is currently expected that the legislation will be adopted by December 15, 1991.

Even though Bill C-28 has not been passed, some pension funds proceeded to increase their foreign content to the new 12% level for that year. This change was made based on the principle that just as new taxes are made effective as of the budget date, so are the new tax allowances.

As it became clear that no legislative action on the Bill would be taken before year end, the pension fund industry sought assurances from Revenue Canada that funds would not be penalized for having increased foreign content up to 12% in

1990. In 1991, Revenue Canada replied that "no negative tax consequences will result to those funds which have adopted this limit in making their investment decisions this year." This is a tax matter and does not come under PBA, 1987 jurisdiction, but if this principle holds true, funds could increase their foreign investment levels to 14% in 1991. However, some funds followed a policy of not exceeding the 10% ceiling until the law was changed.

This issue may cause plan Administrators to revisit their Statement of Investment Policies and Goals (SIP&G) on the occasion of its annual review and confirmation. There are three possible courses of action:

1. Pension funds that have gradually increased the level of their foreign investments may wish to pursue this policy within the limits allowed by the Income Tax Act (Canada). A simple "permissive" amendment to their SIP&G giving them this latitude would be sufficient.
2. Funds that have remained at the 10% level may now want to make the jump to 16% in 1992 (assuming that Bill C-52 will be adopted at the end of 1991). The SIP&G should be amended accordingly with a restated asset mix policy.
3. Funds that have remained at the 10% level may judge that a jump to the 16% level is too drastic an asset shift. Such a jump would represent an increase of 60% in foreign investments, and might unduly raise operating costs as a result of additional transactions or changes in manager assignments. This question should be addressed in the context of their asset mix policy, and an amendment to the SIP&G should be filed with the PCO.

Have You Moved?

We want you to receive information when you need it and to help you avoid costly late filing fees.

To do this we need to keep our mailing list up-to-date. You can help: please notify us as soon as your mailing information changes. Make sure your PCO mail is addressed to the right person at the right address.

Help us help you — keep us informed. To update mailing information please write or fax:

PCO Data Control Section
101 Bloor Street West
9th Floor
Toronto, Ontario
M7A 2K2
FAX: (416) 963-9585

Interview with the Director of the Secretariat



Priscilla Healy

Priscilla Healy joined the PCO in 1989 as Director of the Secretariat after serving in a legal and policy role as Legal Advisor to the Ontario Securities Commission (OSC) since 1985. Prior to joining the civil service in 1980, Ms. Healy practised corporate commercial law with the law firm of Goodman and Goodman.

Ms. Healy has an LL.B. from the Toronto Faculty of Law and an LL.M. in business law from Osgoode Hall Law School.

What similarities do you see between your work at the OSC and at the PCO?

There are a number of similarities. Like the securities field, the pension field is complex and technical. It is also increasingly legalistic. Like the OSC, the PCO is both a regulator and a quasi-judicial tribunal. Both Boards have a strong policy role in the administration of their governing legislation and in advising the government.

There are parallels between policy stakeholders at the two agencies: each is concerned with the interests of the members of the public — shareholders or employees as the case may be — with the needs of the business interests — public companies or plan sponsors as the case may be — and with the interests of an associated industry — the investment industry or pension consultants and insurers as the case may be. Another similarity is the impact of Ontario policies on other provincial and federal jurisdictions.

The PCO issues compliance assistance guidelines, administrative practices and occasionally policy statements. What seems to be the reaction of the pension industry to this role of the PCO?

Our impression is that the pension industry is mainly seeking certainty in minor policy areas from the PCO and staff so that they can carry on business with knowledge of the rules. It is generally understood that major policy areas are determined by the government. Ideally, the policy-making process of the PCO will evolve so that the pension industry will work in partnership with the PCO from the earliest stages through formal and informal consultation. We must communicate our desire for this type of partnership more forcefully.

There is at the PCO, as at the OSC or any regulatory agency, a constant need to balance regulatory protection and the legitimate expectations of the public with the reasonable needs of business — of course, always in the light of legisla-

tive imperatives. It is necessary for the regulator to rely to a great extent upon formal or informal self-regulation by the concerned industry. We also recognize that employer-sponsored pension plans are voluntary, and that over-regulation or that which is perceived to be unreasonable may undermine the goal of encouraging and strengthening pension plan coverage. Accordingly, it is important that all interests be able to perceive that policies are fairly balanced.

Where does the PCO get authority for making policy statements?

The Pension Benefits Act, 1987 is technical and complex, and does not deal expressly with a number of areas, such as plan conversions. It is accepted practice for the PCO to develop policies as needed to afford the pension industry some certainty in planning.

There is legitimate confusion as to the status of staff and Commission policies. Generally, more significant policies are issued by the Commission as Commission policies. Policies of a housekeeping nature are commonly developed and issued by the staff. Such policies comprise a framework for administering the legislation; however, they are not binding as law in specific fact situations upon either the staff or the Commission. Where disagreements arise over administrative practices we encourage dialogue and consultation.

Sometimes parties disagree with PCO policies. We recognize that to challenge the Superintendent or indeed the Commission in legal proceedings is not often a very desirable course of action mainly because of the cost of so doing, which may ultimately be borne by the plan.

To preclude such costly and time-wasting proceedings, we encourage comments from the pension industry at the outset of the policy-making process. In every one of our publications we invite comments and suggestions — we do not receive many. We can only conclude from this that either our policies are so well developed that they are unassailable, or that the industry is so pleased to have a policy at all that they are happy to live with it. Perhaps our clients do not realize that we are more than willing to accept their comments and be responsive to them. We genuinely mean that, and we hope to hear from you!

What role does the Secretariat have in advising the government on policy matters?

As a regulatory authority, the Commission is not primarily responsible for the development of policy options respecting the legislation or regulations. This is the responsibility of the Ministry of Financial Institutions. Nevertheless, the views of the Commission are important, particularly on technical matters or issues affecting our ability to regulate pension plans. The Secretariat is the link between the Commission and the Ministry in this process. In

addition, since the Chairman reports to the Minister, he can express the views of the Commission directly if he judges that to be necessary.

Does the Secretariat consult with pension professionals, other provinces and the federal government?

In 1990 we established three advisory committees — legal, actuarial and accounting — with members drawn from many of the major firms in the professions. Our staff professionals communicate with other professionals in their fields and are members of many professional organizations and committees. We consult both formally and informally with our clients whether through direct contact or through participation in the many public speaking forums. We communicate and consult with the other provinces and with the federal government through the Canadian Association of Pension Supervisory Authorities (CAPSA).

In 1992, we plan to establish additional committees of representatives from the investment industry and those of plan sponsors.

Why was the Secretariat formed?

It was recognized that the new Act required a great deal of policy and interpretation, and that there would be significant post-reform communication needs. The Secretariat was established to remove that burden from the Pension Plans Branch so that they would have the time available to handle the increasing workload.

We work closely with all branches of the Commission, in particular the Pension Plans Branch since much of our role is to facilitate their work. Many issues arise through filings and related questions directed to Pension Officers and appropriate policies are developed in close consultation with actuarial and legal staff.

What other services are provided?

Aside from policy and interpretation, the Act charges the Pension Commission with accountability in the area of promoting pension plan coverage and we take the pension coverage issue very seriously. We are currently working on ways to address this complicated issue to the extent possible. It is our view that understanding of the place of pension coverage is better understood with public awareness and understanding of the need for retirement financial planning generally and the role of pensions from employment in particular. It is vitally important to alert Ontarians to this while they have time enough to plan and save.

Recently, we have begun efforts to increase awareness about retirement financial planning generally and pension plans in particular. We have identified areas where we can see a reasonable possibility of increased pension coverage and our communications will be targeted to employers with under 100 employees, all employees in the 35

to 50 year age group, and in particular, women in the same age group. Plans also include working with other concerned areas of government in these endeavours, and with the pension industry whenever the opportunity can be made or arises.

Why do you feel pension coverage is so low?

We heard confirmation at the *CPC/CAPSA/CIA Public Forum on Pensions: Meeting the Challenge*, that the two major barriers to voluntary pension coverage are over-regulation and a lack of knowledge and interest on the part of many plan members, employees and their employers.

We would like to address both of these problems. I have already described our plans to increase awareness of the need for financial planning for retirement. We hope that many of our colleagues in the pension industry will join us in that endeavour.

While we would like to streamline and simplify the regulatory process, we must do so in a way that does not put the interests of plan members at risk. We are open to any suggestions that would lead to this result.

How can the level of pension coverage be increased?

We believe that plan sponsors and administrators can do much more to explain pension plans to employees. Indeed, they have an obligation to do so particularly if the plan is contributory. Some companies with a corporate culture of openness see it as an opportunity to enhance employee relations.

Regulators can also do much more to assist plan sponsors and administrators to understand and work with the legislation and policies. And both government and employers can play a significant role in raising awareness to employees and the public at large of the need for retirement planning, through pension coverage or otherwise. It is somewhat ironic that the industry tells us we over-regulate by requiring information to be sent to plan members. On the other hand, we believe that if every administrator and plan sponsor were to maximize communication with respect to the pension plan with employees, employees would be in a position to protect themselves to a greater extent, minimizing the need for regulatory intervention. But we're told that communicating with plan members is costly ... and around we go.

What would you most like to see in respect of policy development by the PCO in the next few years?

There are three areas I would like to see developed — none of which involve major policy changes, but all of which would help the voluntary pension system.

A reciprocal agreement among all the Canadian jurisdictions that will facilitate the establishment and maintenance of multi-jurisdictional defined

ment is reached, it is foreseeable that plans will be based increasingly within particular jurisdictions. Because the establishment of plans by jurisdictions will lead to a lack of fairness among employees of the same sponsor in different jurisdictions, and impede the transfer of employees to different jurisdictions, there will be an increased movement to money purchase plans, or more probably, to group RRSPs.

There should be an increased emphasis upon the communication of information to plan members. Almost no one understands how a defined benefit plan works. To be adequately armed with information is the best protection for plan members. Conversely, to adequately inform employees is the best protection for plan sponsors against allegations of unfairness, as well as affording an excellent opportunity for strengthening employee relations.

Greater emphasis should be placed upon pension plan assets through financial statements and statements of investment policies and goals. There are 200 billion dollars of trustee pension monies in Canada. This represents the retirement protection of millions of individuals. These monies once in the plans must be properly invested and accounted for, for reasons affecting the security of plan members, and their impact on the Canadian economy.

What are your plans for the future of the Secretariat?

In my view, the PCO in its policy and communications role should focus on clarifying and simplifying the rules, and increase its public information role with respect to both pension and retirement protection.

Notices

Amendment to the Regulation Introduced Revised Annual Information Return

Regulation to Amend Ontario Regulation 708/87 Made Under The Pension Benefits Act, 1987

1. Form 2 of Ontario Regulation 708/87 is revoked and the following substituted: (see Forms in this issue of the Bulletin)

Note: The above amendment to the Regulation was made on July 18, 1991 and was filed on July 19, 1991. It was published in the Ontario Gazette on August 3, 1991.

Correction - Members' Pregnancy & Parental Leave

In the July, 1991 issue of the Bulletin subsection 38a(1) of the Employment Standards Amendment Act, 1990 (the "ESAA, 1990") was published with an error. It should read as follows:

38a(1)

An employee who has been employed by his or her employer for at least three months and who is the parent of a child is entitled to a leave of absence without pay following:

- (a) *the birth of the child, or*
- (b) *the coming of the child into the custody, care and control of a parent for the first time.*

Invitation to Submit Proposals: Appointment of Plan Administrators

72(1) *If a pension plan that is to be wound up in whole or in part does not have an administrator or the administrator fails to act, the Superintendent may act as or may appoint an administrator.*

New procedures are being implemented respecting the appointment of administrators by the Superintendent. These are intended to permit all individuals or firms wishing to be considered for such an appointment to make their interest known. The procedures will also improve the monitoring of costs that are chargeable to the pension fund.

All firms interested in being appointed administrators pursuant to this section are invited to submit proposals indicating their interest and qualifications. The appointment is typically exercised in those situations where the employer (who is also the administrator of the plan) becomes insolvent. An administrator appointed by the Superintendent must ensure that the pension plan and pension fund are administered in accordance with the PBA, 1987 and Regulation, as required by section 20 of the PBA, 1987. The administrator is also subject to the same standards of care as set out in section 23 of the PBA, 1987 as apply to all other pension plan administrators.

Proposals must be submitted in writing and should indicate the firm's interest and experience in pension plan administration, including the benefit structure, size, and complexity of plans which it has administered. Any experience in administering pension plans during insolvencies should also be indicated.

Proposals should identify:

- qualifications of the firm to act as administrator;
- limitations on the type of plan for which the firm would be willing to act as administrator, e.g. defined contribution or defined benefit plans, plan size, complexity, or only plans for which

- the in-house service the firm provides and affiliates or subsidiaries through which other services may be provided;
- the names and qualifications of the individual(s) who would be responsible, and the hourly billing rates of each; and
- other relevant information on billing rates, such as any fixed fee for service schedules.

It is expected that accounting, actuarial and benefit consulting firms may be interested in submitting proposals, as well as trust and insurance companies. Any firms that have previously submitted proposals to the Superintendent may wish to provide updated versions. Detailed information concerning administration and billing may be obtained from Catherine Helwig at 972-5802 prior to making a proposal. Please address your proposal to David Gordon, Coordinator, Insolvencies, Pension Commission of Ontario. Proposals should be submitted by December 20, 1991.

Appointments

Nurez Jiwani, Director of the Pension Plans Branch is pleased to announce two recent appointments.

On August 12, 1991 Lawrence A. Contant joined the Pension Plans Branch as Senior Manager, Defined Benefits.

Mr. Contant has extensive experience in pension plan administration, investment and policy development for major single and multi-employer public and private sector pension plans. Most recently, Mr. Contant was Administrator of two City of Toronto private pension plans and Administrator for the City of Toronto Group of OMERS. Mr. Contant obtained a Bachelor of Arts degree from York University and earned his AMCT accreditation from Queen's University, Municipal Administration Program (in accordance with the Association of Municipal Clerks and Treasurers).

On September 3, 1991 Stanley S. Chan joined the Pension Plans Branch as Manager, Special Plans.

Mr. Chan brings to the Commission many years of management and technical experience in the life insurance business with special emphasis on pension plans, annuities and financial reporting. A graduate of the University of Western Ontario in Honours Maths, Mr. Chan has been involved in the administration of Canadian and American pension plans. He became a Fellow of the Society of Actuaries and Fellow of the Canadian Institute of Actuaries in 1971.

Reciprocal Agreement: CAPSA Suggests a New Approach

THERE HAVE been a number of attempts to update the 1968 Agreement, particularly since the jurisdictions were able to establish a consensus as to uniformity of legislation in the early 1980's. Renewed efforts have been made for some time by the Canadian Association of Pension Supervisory Authorities ("CAPSA") in the form of a new Agreement that would give some certainty to both plan administrators and regulators.

For the past several years, CAPSA has been working towards an approach that would clarify and formalize the current practice. Issues of administration are governed by the legislation of the jurisdiction of registration. Issues of entitlement are governed by the legislation of the jurisdiction of employment. An agreement using this approach would have to be agreed to by all the governments concerned because a yielding up of jurisdiction as well as a delegation of powers would be involved in some significant areas.

At a recent meeting, CAPSA has come to the conclusion that this approach may not result in an effective resolution of the legal and administrative difficulties caused by the lack of uniformity among jurisdictions.

Accordingly, CAPSA has suggested a simpler approach: **the law of the jurisdiction of registration will govern all aspects of the plan, including benefit entitlements.** While administratively expedient, this approach raises other issues that will have to be thought through. For example, the application of PBGF coverage presents obvious difficulties. This may require that some exceptions will have to be made. However, these would have to be limited so as to ensure that the scheme would be workable.

It is **not** intended that the CAPSA proposal would add another regulatory layer, but that it facilitate the establishment and administration of national or multi-jurisdictional plans.

Over the next few months, the members of CAPSA will be consulting their individual governments as to the acceptability of this option. During this time, comments are invited from the industry as to whether such an approach would satisfactorily address legal and administrative difficulties in administering a national or multi-jurisdictional plan. Our hope is that a solution to this long standing problem will assist in encouraging pension plan coverage.

I invite you to participate in this process and ask that you address comments to the Secretariat,

Revised Annual Information Return Now Approved

ON JULY 17, 1991, the newly revised Annual Information Return (AIR) was approved by Cabinet and the amended form was published in the Ontario Gazette on August 3, 1991. This approval brought to a close an extensive consultation process which began last fall, between the pension community and a PCO task force. The new form and schedules were distributed to plans with a July 31 year end. A specimen sample of the new form, schedules and instructions follow this page. The official amendment to the Regulation is recorded in the Notices section.

The new AIR collects only essential information which is applicable and common to all pension plans. Supplemental information, specific to the plan itself, will be collected by way of the following schedules:

- **Schedule A (Annual Fees Payable):** for all plans
- **Schedule B (Pension Benefits Guarantee Fund Assessment):** for defined benefit plans only
- **Schedule C (List of Participating Employers):** for plans with more than one participating employer

During the first year of application, all pension plans will receive the basic form and all schedules. After the PCO's AIR database is constructed, only applicable schedules to the pension plans will be sent with the AIR core form.

During the consultation process the task force received valuable input from plan sponsors and pension professionals. The task force would like to thank all those who took time to participate in the development and consultation process.

As more pension plans begin to use the new AIR, instructions and schedules improvements may be made. Please write to the Pension Commission of Ontario, Communications Branch, 101 Bloor Street West, 9th floor, Toronto, Ontario, Ontario M7A 2K2 (Fax 963-9585) and note Re: AIR.

Administrative Practices

Making Application under Regulation 7a(2)(c)

REGULATION 7A(2)(C)

requires both the consent of the Commission under subsection 79(1) of the PBA, 1987 and a court order authorizing the distribution of funds for the payment of surplus to an employer on wind-up. Accordingly, the applicant must make application to both the Commission and the Court.

In view of the uncertainty about appropriate procedures for such applications, and the Commission's concern that adequate notice of the proceedings be given to all parties for both applications, the Commission is issuing the following guidelines.

1. The Commission's preferred method of procedure is for applicants to apply to the Commission under subsection 79(1) of the PBA, 1987 and Regulation 7a(2)(c) for its consent before applying to the court for an order authorizing the distribution of funds from surplus.
2. If an applicant obtains a court order authorizing the distribution of funds from surplus before obtaining Commission consent, the Commission will require assurance that the following criteria were met in the court proceedings:
 - the standards of notice required for applications to the Commission as to length of notice, method of notification, information in the notice, and parties notified have been complied with;
 - all issues which the Commission would consider have been addressed; and
 - the interests of all affected groups were considered and assessed by the court.

If the Commission concludes that procedures used for the court application have not satisfied the criteria which the Commission would apply to its own proceedings, the Commission may exercise its concurrent jurisdiction and hold a hearing in which the issue of entitlement is considered, requiring adequate notice, legal representation for beneficiary groups, and determination of the issues.

The Commission may order that the costs of representation for beneficiary groups in such a hearing be paid out of the relevant portion of the pension surplus.

3. The Commission may continue to invoke its power to attach such terms and conditions to its consent as it considers proper.
4. For greater certainty, no application under Regulation 7a(2)(c) will be considered by the

Notices - Erratum

WE HAVE RECENTLY discovered that the excerpts of the *Employment Standards Amendment Act (Pregnancy and Parental Leave)*, 1990 published in the July, 1991 *PCO Bulletin* were printed in error from an early reading of the Bill, rather than from the proclaimed Act. The *Employment Standards Amendment Act (Pregnancy and Parental Leave)*, 1990, given Royal Assent on December 20, 1990, was announced in the Parliamentary Notices—Royal Assent section of the *Ontario Gazette* on January 19, 1991. In order to clarify any misunderstandings, the entire Act is reproduced here for your reference. The PCO apologizes for any inconvenience this error may have caused.

An Act to amend the Employment Standards Act with Respect to Pregnancy and Parental Leave

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. **The heading preceding section 35 of the Employment Standards Act is repealed and the following substituted:**

PREGNANCY AND PARENTAL LEAVE

2. **Sections 35, 36, 37 and 38 of the Act are repealed and the following substituted:**

35. In this Part,

"parent" includes a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his or her own;

"parental leave" means a leave of absence under subsection 38a(1);

"pregnancy leave" means a leave of absence under subsection 36(1).

36.—(1) A pregnant employee who started employment with her employer at least thirteen weeks before the expected birth date is entitled to a leave of absence without pay.

(2) An employee may begin pregnancy leave no earlier than seventeen weeks before the expected birth date.

(3) The employee must give the employer,

- (a) at least two weeks written notice of the date the leave is to begin; and
- (b) a certificate from a legally qualified medical practitioner stating the expected birth date.

37.—(1) Subsection 36(3) does not apply in the case of an employee who stops working because of complications caused by her pregnancy or because of a birth,

still-birth or miscarriage that happens earlier than the employee was expected to give birth.

(2) An employee described in subsection (1) must, within two weeks of stopping work, give the employer,

- (a) written notice of the date the pregnancy leave began or is to begin; and
- (b) a certificate from a legally qualified medical practitioner that,
 - (i) in the case of an employee who stops working because of complications caused by her pregnancy, states the employee is unable to perform her duties because of complications caused by her pregnancy and states the expected birth date, or
 - (ii) in any other case, states the date of the birth, still-birth or miscarriage and the date the employee was expected to give birth.

38.—(1) The pregnancy leave of an employee who is entitled to take parental leave ends seventeen weeks after the pregnancy leave began.

(2) The pregnancy leave of an employee who is not entitled to take parental leave ends on the later of the day that is seventeen weeks after the pregnancy leave began or the day that is six weeks after the birth, still-birth or miscarriage.

(3) The pregnancy leave of an employee ends on a day earlier than the day provided for in subsection (1) or (2) if the employee gives the employer at least four weeks written notice of that day.

38a.—(1) An employee who has been employed by his or her employer for at least thirteen weeks and who is the parent of a child is entitled to a leave of absence without pay following,

- (a) the birth of the child; or
- (b) the coming of the child into the custody, care and control of a parent for the first time.

(2) Parental leave may begin no more than thirty-five weeks after the day the child is born or comes into the custody, care and control of a parent for the first time.

(3) The parental leave of an employee who takes a pregnancy leave must begin when the pregnancy leave ends unless the child has not yet come into the custody, care and control of a parent for the first time.

(4) The employee must give the employer at least two weeks written notice of the date the leave is to begin.

38b.—(1) Subsection 38a(4) does not apply in the case of an employee who is the parent of a child and who stops working because the child comes into the custody, care and control of a parent for the first time sooner than expected.

(2) The parental leave of an employee described in subsection (1) begins on the day the employee stops working.

(3) An employee described in subsection (1) must give the employer written notice that the employee wishes



to take leave within two weeks after the employee stops working.

38c. Parental leave ends eighteen weeks after it began or on an earlier day if the employee gives the employer at least four weeks written notice of that day.

38d.—(1) An employee who has given notice to begin pregnancy leave or parental leave may change the notice,

- (a) to an earlier date if the employee gives the employer at least two weeks written notice before the earlier date; or
- (b) to a later date if the employee gives the employer at least two weeks written notice before the date leave was to begin.

(2) An employee who has given notice to end leave may change the notice,

- (a) to an earlier date if the employee gives the employer at least four weeks written notice before the earlier date; or
- (b) to a later date if the employee gives the employer at least four weeks written notice before the date leave was to end.

38e.—(1) During pregnancy leave or parental leave, an employee continues to participate in each type of benefit plan described in subsection (2) that is related to his or her employment unless he or she elects in writing not to do so.

(2) For the purpose of subsection (1), the types of plans are pension plans, life insurance plans, accidental death plans, extended health plans, dental plans and any other types of benefit plans that are prescribed.

(3) During an employee's pregnancy leave or parental leave, the employer shall continue to make the employer's contributions for any plan described in subsection (2) unless the employee gives the employer a written notice that the employee does not intend to pay the employee's contributions, if any.

(4) Seniority continues to accrue during pregnancy leave or parental leave.

38f.—(1) The employer of an employee who has taken pregnancy leave or parental leave shall reinstate the employee when the leave ends to the position the employee most recently held with the employer, if it still exists, or to a comparable position, if it does not.

(2) If the employer's operations were suspended or discontinued while the employee was on leave and have not resumed when the leave ends, the employer shall reinstate the employee, when the operations resume, in accordance with the employer's seniority system or practice, if any.

(3) The employer shall pay a reinstated employee wages that are at least equal to the greater of,

- (a) the wages the employee was most recently paid by the employer; or
- (b) the wages that the employee would be earning had the employee worked throughout the leave.

38g. An employer shall not intimidate, discipline, suspend, lay off, dismiss or impose a penalty on an

employee because the employee is or will become eligible to take, intends to take or takes pregnancy leave or parental leave.

38h.—(1) This section applies to a person who stopped work on or after the 18th day of November, 1990 but before the day this section comes into force and who would have been entitled to pregnancy leave if section 2 of the Employment Standards Amendment Act (Pregnancy and Parental Leave), 1990 had come into force before she stopped work.

(2) A person to whom this section applies shall be deemed to have taken a pregnancy leave beginning when the person stopped work if,

- (a) the stopping of work was related to the person's pregnancy; and
- (b) when the person stopped work, she was not entitled to pregnancy leave.

38i.—(1) This section applies to a person who stopped work on or after the 18th day of November, 1990 but before the day this section comes into force, whether or not the person took a pregnancy leave that ended during that period, or whose pregnancy leave ended during that period and who did not return to work if the person would have been entitled to parental leave had section 2 of the Employment Standards Amendment Act (Pregnancy and Parental Leave), 1990 come into force before the person stopped work or before the pregnancy leave ended.

(2) A person to whom this section applies shall be deemed to have taken a parental leave beginning when the person stopped work or when the person's pregnancy leave ended if the stopping of work or the not returning to work was related to the birth of a child or to the coming of a child into the custody, care and control of a parent for the first time.

38j. (1) Section 38e does not apply in respect of any period before this section comes into force.

3. Subclauses 47(1)(c)(i) and (ii) of the Act, as enacted by the Statutes of Ontario, 1981, chapter 22, section 3, are repealed and the following substituted:

- (i) the sum of \$4,000 with respect to any wages other than the employee's severance pay or an amount payable to the employee under Part XI, plus
- (ii) the amount of the employee's severance pay, if any, plus
- (iii) the amount payable to the employee under Part XI.

4. Subsection 65(1) of the Act, as amended by the Statutes of Ontario, 1987, chapter 30, section 7, is further amended by adding the following clause:

- (ra) prescribing types of benefit plans for the purpose of subsection 38e(2).

5. This Act comes into force on the day it receives Royal Assent.

6. The short title of this Act is the Employment Standards Amendment Act (Pregnancy and Parental Leave), 1990.





Pension
Commission
of Ontario

Instructions for Completing the Annual Information Return

THE ANNUAL Information Return (the "AIR") is the principal filing document required under the Pension Benefits Act, 1987 (the "PBA, 1987") and Regulation. The amendment to the Regulation and form were published in the Ontario Gazette on August 3, 1991.

Administrators or their agents are required by legislation to **complete the AIR (and applicable supplementary schedules) accurately and to file them by the deadlines established.**

You are requested to read and follow the instructions below in order to avoid the inconvenience of having inaccurate or incomplete forms returned to you. Your co-operation is appreciated.

Section 1 - Administrator

The Administrator is the person or group of people legally responsible for administering the pension plan. In many cases, the Administrator is the plan sponsor or corporate entity that established the pension plan.

Section 2 - Plan Type

In this section, the name of the pension plan used for registration purposes must be identified. The type of plan must also be identified from among four basic types of plans described below:

Defined Benefit

In this plan, members are promised a defined pension benefit based on a pre-determined formula. If the employer alone makes contributions under the pension plan, the plan is considered to be non-contributory. If both the employer and the plan members make contributions under the pension plan, the plan is called a contributory pension plan.

Defined Contribution

In this plan, a specified amount of money is contributed under the pension plan either by the employer alone or by the employer and plan members together depending on whether the plan is non-contributory or contributory. The pension benefit received by a member is determined by the value of the contributions, plus earnings on the contributions, in the member's account at the time of retirement or termination.

Multi-employer

Such plans may be of the defined benefit or defined contribution type and are established, administered and funded for employees of two or more employers as a result of an agreement, statute or municipal by-law. (It does not include a pension plan where all employers are affiliated within the meaning of the Business Corporations Act, 1982.)

Other Plans (Hybrid)

These plans have certain characteristics of both defined benefit and defined contribution plans. Various features of each type of plan may be combined to produce a range of hybrid pension plans.

Section 5 - Active Member

These are members of the pension plan currently making contributions to the pension fund or for whom contributions are being made.

Section 6 - Statement of Investment Policies and Goals (the "SIP&G")

Pension plans completely invested in fully insured contracts and/or deposit administration general funds contracts are exempt from filing a SIP&G. Administrators of all other pension plans must confirm, at least once annually, that they have reviewed their SIP&G, and that no change to the SIP&G has been made. If an amendment has been adopted, a copy of the amendment must be filed with the Pension Commission of Ontario within 90 days of making the amendment.

Section 7 - Contributions

Detailed information must be provided on the funding of the pension plan by the employer and plan member(s), if applicable, for the period covered by this AIR.

"Employer credits" may arise where overfunding has occurred in previous years (example: unvested employer contributions). Reference box 11.

The "adjusted current service cost contribution" is determined by subtracting "permitted employer credits" from "employer required current service cost contributions" for this reporting period. Reference box 12.

Section 8 - Special Payments

Special payments may occur in plans with a defined benefit as well as in certain hybrid plans. Report any special payments that have been made in respect of the reporting period to cover any unfunded liabilities, experienced deficiencies or solvency deficiencies as reported in the most recently filed actuarial valuation or cost certificate.

Section 9 - Individual Preparing the AIR

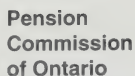
If someone other than the Administrator completes the AIR, that person's name and corporate affiliation must be recorded on the AIR.

Section 10 - Declaration

The declaration is an acknowledgement by the Administrator that the information recorded in the AIR is correct and confirms that the pension plan is being administered in compliance with the requirements of the PBA, 1987.

The declaration may be signed **only** by:

- the Administrator, or where the Administrator is a corporate entity, by a senior officer of the corporation; or
- a designated representative of the Board of Trustees, where the pension plan is administered by a Board of Trustees.



Form 2
Pension Benefits Act, 1987
S O 1987, Chapter 35
(PBA, 1987)

Annual Information Return

To be completed by
Pension Plan Administrator

1	Provincial Registration Number		
	Name and Mailing Address of Pension Plan Administrator (In accordance with Section 8 of PBA, 1987)	Name and Mailing Address of Pension Plan Administrator (In accordance with Section 8 of PBA, 1987)	
	Telephone () -	Postal Code	Telephone () -
	Fax () -	Postal Code	Fax () -
2	Name of Pension Plan	Name of Pension Plan	
	Plan Type	Plan Type	
		<input type="checkbox"/> Defined Benefit <input type="checkbox"/> Multi-Employer Pension Plan	
		<input type="checkbox"/> Defined Contribution	
		<input type="checkbox"/> Other (Specify) _____	
3	This form is for reporting period Year Month Day Year Month Day / / to / /	This form is for reporting period Year Month Day Year Month Day / / to / /	
	Name of Employer / Plan Sponsor	Name of Employer / Plan Sponsor	
	Address of Employer / Plan Sponsor	Address of Employer / Plan Sponsor	
	Telephone () -	Postal Code	Telephone () -
	Fax () -	Postal Code	Fax () -

Name of Corporate Trustee / Insurance Company		Name of Corporate Trustee / Insurance Company	
Address of Corporate Trustee / Insurance Company		Address of Corporate Trustee / Insurance Company	
Postal Code		Postal Code	
Telephone () -	Fax () -	Telephone () -	Fax () -
Name of Corporate Trustee / Insurance Company		Name of Corporate Trustee / Insurance Company	
Address of Corporate Trustee / Insurance Company		Address of Corporate Trustee / Insurance Company	
Postal Code		Postal Code	
Telephone () -	Fax () -	Telephone () -	Fax () -

Please use additional sheets to complete the list of Corporate Trustee / Insurance Company in the same format as above if there are more than 2 .

Membership

Number of active members at the end of the previous reporting period

1

Number of active members who joined the plan during this reporting period

2

(Add boxes 1 and 2)

➤ 3

Subtract: number of members who ceased to be active members during this reporting period due to:

Retirement

4

Death

5

Discontinuance / Reorganization of business

6

Other terminations of membership in plan

7

(Add boxes 4, 5, 6 and 7)

➤ 8

Number of active members at plan's reporting period end (Subtract box 8 from box 3)

9

Is the plan completely invested in a fully-insured contract and/or deposit administration general funds contract regulated by the Insurance Act or Canadian & British Insurance Companies Act (Canada)?

☐ **Yes**
Proceed to Section 7

☐ No
Please continue

You are required to review the Statement of Investment Policies and Goals (SIP &G) at least once each year in order to confirm or amend it. Have you amended the SIP &G since last AIR filed?

☐ Yes, date last amendment filed with PCO Year / Month / Day

☐ No

7 | Contributions for this reporting period:

a) Employer Required Current Service Cost Contribution
(calculated in accordance with the latest filed Cost Certificate)

10 \$

Less Permitted Employer Credits

11

Adjusted Current Service Cost Contribution (Subtract box 11 from box 10)

12

Actual Current Service Cost Contribution paid into the fund

13

b) Member Required Current Service Cost Contributions paid into the fund

14

Voluntary Member Contribution

15

Total Member Contributions paid into the fund (Add Boxes 14 and 15)

16

8 Special Payments made for this reporting period

Employer payments made for: a) going concern unfunded actuarial liabilities

17 \$

b) experience deficiencies

18

c) initial unfunded liabilities

19

d) solvency deficiencies

20

Total Special Payments paid into the fund (Add boxes 17, 18, 19 and 20)

21

9	Name of Individual other than the Pension Plan Administrator/Sponsor who prepared this form	
Corporate Affiliation		
Address of the Corporation		
		Postal Code
Telephone () -		Fax () -

10	<p align="center">Declaration of Pension Plan Administrator</p> <p>To the best of my knowledge and belief, I certify that:</p> <ul style="list-style-type: none"> • all the information presented on this form and the attached schedules is true and correct; and • the contributions paid to the pension plan or fund have been at least equal to those required by the Pension Benefits Act, 1987 and Regulation 708/87 (as amended); and • both the pension plan and fund are administered, and the investments are selected in accordance with the Pension Benefits Act, 1987 and Regulation 708/87 (as amended). 				
Name (Please Print)		Date	Year	Month	Day
			/	/	
Signature		Title / Position			

Information provided on this Return may be audited by the Pension Commission of Ontario.



**Pension
Commission
of Ontario**

Operations Section
101 Bloor St. W.
10th Floor, Toronto
Ontario M7A 2K2
(416) 963-0522

**Annual Information Return
Schedule
Annual Fees Payable**

Provincial Registration Number

Name of Employer / Plan Sponsor

Name of Pension Plan

End of Pension Plan
Period under Review

Year Month Day

/ /

To be completed by the Pension Plan Administrator

PLAN MEMBERSHIP - Enter below the number of active male and female members at the end of this reporting period by location of employment

Location of Employment

Male

Female

Ontario

101

111

Newfoundland

102

112

Nova Scotia

103

113

Quebec

104

114

Manitoba

105

115

Saskatchewan

106

116

Alberta

107

117

Yukon Territory

108

118

Northwest Territories

109

119

(Add boxes 101 through 109)

110

(Add boxes 111 through 119)

120

British Columbia

121

126

Prince Edward Island

122

127

New Brunswick

123

128

Outside Canada

124

129

(Add boxes 121 through 124)

125

(Add boxes 126 through 129)

130

Total Members (Add boxes 110, 120, 125 and 130)

131

ANNUAL FILING FEES

Total number of members assessed (Add boxes 110 and 120)

132

If number in box 132 between 1 and 40; enter \$200 in box 133

If number in box 132 is between 41 and 2,000; multiply the number in box 132 by \$6.00 and enter the result in box 133

If number in box 12 is over 2,000; enter \$12,000 in box 133

133

CHEQUE PAYABLE TO: TREASURER OF ONTARIO



**Annual Information Return
Schedule B
Pension Benefits Guarantee Fund Assessment
Defined Benefits Plans Only**

Provincial Registration Number

Name of Employer / Plan Sponsor

Name of Pension Plan

Assessment Date (as of the end
of Pension Plan period under review)

Year Month Day

/ /

Review Date of Last Actuarial
Report Filed with the
Pension Commission

Year Month Day

/ /

PART I (To be completed by the Actuary)

A The market value of investments of the fund attributable to Ontario
Members exceeds the solvency liabilities attributable to the Ontario members

☐ Yes (Please proceed to Section C)

☐ No (Please complete Section B based on last actuarial valuation filed)

B Where the review data of the actuarial report is subsequent to December 31, 1987, please provide following information:

Solvency liabilities in respect to employment in Ontario
[excluding any liabilities attributed to the application
of subsection 75(7) of the Act]

201

Market value of investments including any cash balances
and accrued or receivable income items held by the Plan

202

Solvency liabilities in respect to employment in Ontario
[excluding any liabilities attributed to the application
of section 75 of the Act]

203

Solvency liabilities of the Pension Plan [excluding any
liabilities attributable to the application of section
75 of the Act]

204

Ontario Portion (Divide box 203 By box 204)

>205

Ontario Portion of the Fund (Multiply box 202 by box 205)

>206

Deficiency Assessment for Purpose of Guarantee Fund (Subtract box 206 from box 201)

207

C Declaration of Actuary

As Actuary of the Pension Plan, I certify that to the best of my knowledge and belief the information reported here is true and correct.

Signature

Date Year Month Day

/ /

Professional Designation

Name (Please Print)

Telephone

() -

Fax

() -

Corporation Affiliation & Corporate Address

PART II (To be completed by the Pension Plan Administrator)

Number of Ontario Members (per Schedule A)

(Add box 101 and 111 in Schedule A - Annual Fee Payable)

X \$1.00

208

Amount of deficiency assessment

(If the value from box 207 is greater than zero)

X 0.002

209

Total Guarantee Fund Assessment Amount (Add boxes 208 and 209)

230

CHEQUE PAYABLE TO: PENSION BENEFITS GUARANTEE FUND



Provincial Registration Number

Name of Employer / Plan Sponsor

Name of Pension Plan

End of Pension plan
Period under review

Year Month Day

/ /

To be completed for pension plans with more than one participating employer. (Example: Subsidiary and affiliated companies)
Please provide the name and address of participating employers. Use additional pages if space is insufficient.

<p>1 Name of Participating Employer</p> <p>Mailing Address</p> <p>Postal Code</p> <p>Effective Date of Participation Year Month Day / /</p>	<p>5 Name of Participating Employer</p> <p>Mailing Address</p> <p>Postal Code</p> <p>Effective Date of Participation Year Month Day / /</p>
<p>2 Name of Participating Employer</p> <p>Mailing Address</p> <p>Postal Code</p> <p>Effective Date of Participation Year Month Day / /</p>	<p>6 Name of Participating Employer</p> <p>Mailing Address</p> <p>Postal Code</p> <p>Effective Date of Participation Year Month Day / /</p>
<p>3 Name of Participating Employer</p> <p>Mailing Address</p> <p>Postal Code</p> <p>Effective Date of Participation Year Month Day / /</p>	<p>7 Name of Participating Employer</p> <p>Mailing Address</p> <p>Postal Code</p> <p>Effective Date of Participation Year Month Day / /</p>
<p>4 Name of Participating Employer</p> <p>Mailing Address</p> <p>Postal Code</p> <p>Effective Date of Participation Year Month Day / /</p>	<p>8 Name of Participating Employer</p> <p>Mailing Address</p> <p>Postal Code</p> <p>Effective Date of Participation Year Month Day / /</p>

Commission until the Superintendent has approved the wind-up report, nor should such an application proceed to the court.

Making Application under Subsection 64(7)

Erratum - Those who received notice of the following administrative practice on August 30, 1991 through the Rapid Communications Network are advised that a typographical error appeared in the Commission's policy. The three conditions outlined for Commission consent are to be read conjunctively; that is, all of (a), (b) and (c) must be satisfied. To satisfy (a), both conditions of (i) and (ii) must be met. To satisfy (b), either (i) or (ii) may be met. The corrected version appears below.

Where an application is made to the Commission under subsection 64(7) of the PBA, 1987 for consent to a refund of contributions to plan members, staff will recommend that the Commission give its consent only where:

- a) the requirements of subsection 64(8) are satisfied; that is,
 - i) the plan (or an amendment to the plan) provides for the refund; and
 - ii) the employer has assumed responsibility for funding all pension benefits associated with the contributions;
- b) either
 - i) after the refund has been made, the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is 1.0 or more; or
 - ii) where prior to the refund, the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is less than 1.0, the ratio is not further reduced as a result of the refund; and
- c) there is equitable treatment of the individuals within any category or categories (actives, retirees, deferreds) to whom the refund is being made.

If the plan has been amended to deem required contributions to be additional voluntary contributions, the requirements of subsection 64(8) and the foregoing policy criteria will apply. In all cases, and notwithstanding that the foregoing requirements are met, the Commission will use its discretion under subsection 64(8) in granting its consent.

Conversion from Defined Benefit to Defined Contribution Plan

The conversion of a defined benefit plan to a defined contribution plan alters the fundamental pension agreement between the employer and the plan members. The PBA, 1987 does not expressly address such plan conversions. It is recognized that plan sponsors are entitled to change the basic

structure of a pension plan for future benefits; however, plan members should receive full information with respect to the conversion and the options available to them. While each case presents its own circumstances, the following guidelines are set out to assist in effecting such conversions.

Plan conversions are effected by means of a plan amendment. Generally, such an amendment will be registered only if it is designed in accordance with the guidelines. The guidelines are directed towards conversions affecting benefits already accrued.

1. Application

This Administrative Practice is directed to plan conversions where the plan is converted from a defined benefit to a defined contribution plan, and the benefits of the members that have been accrued as of the date of conversion are valued and credited toward the member's account in the subsequent defined contribution plan.

2. Means Of Effecting Conversion

The conversion is effected by a plan amendment, for which notice must be given prior to implementation in accordance with subsection 27(1) of the PBA, 1987. The effective date of the plan amendment may not be earlier than the date of the notice.

As soon as the member's entitlements and commuted values under the defined benefit plan can be determined, each member being affected by the conversion must be given a Statement of Benefits and Options. This Statement must contain as a minimum the information set out in Schedule A.

3. Option Of Members

Each active member of the plan who is affected by the conversion must be given the option of preserving his or her accrued benefits in the form of a defined benefit. If no election is made, the member is considered to have selected the option of preserving his or her accrued benefits in the form of a defined benefit.

If the sponsor elects to purchase an annuity for the members who choose to preserve their benefits in the form of a defined benefit, the annuity must comply with all requirements of the plan and the PBA, 1987, such as early retirement provisions (section 42), transfer rights (section 43) and pre-retirement death benefits (section 49).

For greater certainty, notwithstanding the purchase of an annuity at the time of plan conversion, the member retains his or her rights under the plan and under the PBA, 1987. Please refer to section 5, Salary Projections.

4. Minimum Commuted Value

The commuted value of the accrued benefits as of the date of conversion must be determined for

each member. The method used to determine the commuted values must produce for each member a value that is not less than the value determined in accordance with the Recommendations for the Computation of Minimum Transfer Value of Deferred Pensions issued by the Canadian Institute of Actuaries, effective November 14, 1988 and the requirements of subsection 16(1) of Regulation 708/87 under the PBA, 1987.

The value of ancillary benefits such as bridge benefits or early retirement benefits for which the member has met all eligibility requirements under the pension plan as of the date of conversion must be taken into account in determining the commuted value of the member's accrued benefits in order to ensure compliance with subsection 14(1)(c) of the PBA, 1987.

In the case of a contributory pre-1987 accrued benefit, the commuted value must not be less than the member's required contributions plus interest.

Please also refer to section 5, Salary Projections.

5. Salary Projections

Where a plan is structured such that benefits are related to final earnings or best earnings of a member, a projection of salary increases must be taken into account in calculating the commuted value of the accrued benefits unless the plan clearly provides that salary projection need not be taken into account on a plan conversion. However, the probability of termination may also be recognized in the determination of the commuted values. The staff may also approve an approximate method for the determination of the commuted value which will produce a reasonably similar result.

If the plan is amended to freeze the salary level at which the accrued benefits are determined as at the date of conversion, notice of this amendment to freeze the salary level must be included as part of the notice of amendment which must be given to all affected plan members.

6. Application Of The 50% Rule And Treatment Of The Excess

In a contributory plan, the amount by which the member's contributions plus interest exceed 50% of the commuted value of the pension as of the date of conversion must be added to the member's defined contribution account (1) for all benefits which accrued from January 1, 1987 to the date of conversion, and (2) for pre-1987 accrued benefits where the 50% rule applies to such benefits.

The plan sponsor may determine that this excess amount either be retained (1) in the member's required contribution account, in which case the amount is treated in the same manner as the other monies in the accounts, or (2) treated as an

additional voluntary contribution. The amendment effecting the conversion must specify how the excess amount is to be treated.

If the excess is deemed to be an additional voluntary contribution and the sponsor wishes to pay the excess to the members in cash, the plan must be amended to so allow and an application must be made to the Commission under subsection 64(7) of the PBA, 1987 for a refund of contributions to the members.

7. Vesting

Conversion of the plan does not affect the date on which vesting occurs.

8. Refunds

Where, in connection with the conversion, the plan is to be amended to provide for a refund of a member's contributions, application must be made to the Commission under subsection 64(7) of the PBA, 1987.

9. Funding

If the assets in the plan are not sufficient to cover the commuted value of the benefits that are to be converted and the annuities purchased pursuant to the conversion, it would be expected that the sponsor must contribute the shortfall to the plan in a lump sum. Further, the sponsor must if necessary make a lump sum payment to ensure that the transfer ratio (market value of assets exceeds the solvency liabilities) in respect of the defined benefit portion of the plan that remains after the conversion is not less than 1.0 before the conversion is implemented.

10. Conversion Report

A conversion report is required to be filed at the time the plan amendment is approved.

SCHEDULE A

Statement of Benefits and Options for Members on Plan Conversion

The following information must be included in the Statement of Benefits and Options, which is to be given to each member as soon as the member's entitlements and commuted values from the defined benefit plan can be determined:

1. The member may elect not to convert the accrued pension and retain all entitlements under the existing defined benefit plan.
2. If the member elects to convert the accrued pension, the amount of the accrued pension and the commuted value that will be credited to the member's defined contribution account, which must include the amount and value of:
 - ancillary benefits for which the member has satisfied all eligibility requirements; and
 - any benefit improvement granted in conjunction with the conversion.
3. The amount of any excess member contribu-

tions resulting from application of the 50% rule and the treatment of such contributions.

4. A statement that the member will no longer be entitled to the benefits under the defined benefit plan, and that the member's pension benefit will depend on the earnings of the defined contribution plan and the annuity rates in effect at the time the member has terminated employment and chooses to annuitize the benefit, except with respect to benefits not converted.
5. Identification of any ancillary benefits for which the member has not met the eligibility requirements and that these ancillary benefits will no longer be offered in the defined contribution plan.
6. A statement that the defined contribution account is subject to the vesting rules of the plan, and specification of the amount that is vested as of the date of the conversion.

Your Questions Answered

Q. When must the registration of a pension plan change to another province? How is this actually accomplished?

- A. The PCO is usually advised of a change in plurality of membership and thus the need for a change in the province of registration by the Administrator or agent. Change in province of registration is usually not required if the shift in membership is temporary. A change would usually be required if the plurality shifted as the result of a plant closure, movement or hiring of a large group of employees, or purchase of a new division.

Once it has been confirmed that a change in province of registration is required, the PCO brings the pension plan file up-to-date. This may mean obtaining missing AIRs, missing amendments or other plan documents. After updating, the complete file is transferred to the new province of registration. The PCO keeps a small skeleton file containing copies of the Application for Registration and several recent AIRs.

Q. What documents does the PCO have on file for plans registered in another province but having Ontario members?

- A. The PCO would not usually have any information on file for plans registered in another province (with the exception of the skeleton file mentioned above). If information is needed concerning the plan, the first contact is the Administrator and then the province of registration.

Q. Why does the PCO charge late filing fees on AIRs when the Administrator did not receive the original form from the PCO in the first place?

- A. There are many reasons why an Administrator does not receive their original AIR, the most frequent one being a change in the address of the Administrator. As a service, the PCO attempts to notify Administrators of the requirement to file an AIR. Nevertheless, it is the responsibility of the Administrator to obtain a copy of the AIR if one is not received from the PCO. The Administrator has six months from the year end of the plan to when the AIR must be filed. If the AIR is not received within 2 months after the year end of the plan the Administrator should follow-up with the PCO — and thus avoid late filing fees.

Q. Does Policy Statement 2 apply to transfer of assets as a result of a corporate reorganization where there is no purchase and sale involved?

- A. Policy Statement 2 applies only to transfers of assets which result from a purchase and sale.

Clarification

In the July, 1991 Bulletin, one of the questions dealt with the pension plan Administrator disclosing intentions with respect to surplus in the wind-up report. The answer was given that the Administrator could simply state that surplus was not being dealt with at that time. However, it should be clarified that the PCO does expect the Administrator to identify the existence of the surplus and to state what their intention is.

Tribunal Activities

This section summarizes all matters related to the Pension Commission of Ontario.

Commission Meeting Dates, 1991 and 1992

The Pension Commission will convene on the following Thursdays in 1991: November 21, and December 19.

The 1992 Thursday meetings will be: January 30, February 20, March 26, April 23, May 21, June 25, July 23, August 27, September 24, October 22, November 26, and December 17.

Requests for Hearings

- a) **General Motors of Canada Limited**

- Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published in the March, 1991 (Vol.2, Issue 1) Bulletin. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, August 19, 20, 1991. The hearing will resume October 23 - 25, 1991.

b) Hospitals of Ontario Pension Plan ("HOOPP")

At a preliminary hearing held October 11, 1990, the Commission ruled it had jurisdiction to require a hearing resulting from the Superintendent's refusal to make an order pursuant to section 88 of the PBA, 1987 to compel the Ontario Hospital Association to comply with clause 8(1)(e). The reasons for this decision were released November 22,

1990 and published in the December, 1990 (Vol. 1, Issue 4) Bulletin. A motion to quash an appeal of the November 22, 1990 Commission decision was granted by the Ontario Court (General Division) Divisional Court. The Commission hearing on the substantive issues was held April 19, 1991. Reasons for Decision dated June 26, 1991 are published in the following Commission Decisions section. The Commission Decisions are being appealed.

c) American Federation of Musicians' and Employers' Pension Welfare Fund (Canada)

A request for a hearing resulted from a Notice of Proposal to make an Order pursuant to section 88 of the PBA, 1987 issued by the Superintendent of Pensions. A hearing was held March 7, 1991. The Decision of the Commission dated June 27, 1991 is published in the following Commission Decisions section.

Commission Decisions

IN THE MATTER OF the Pension Benefits Act, 1987, S.O. 1987, c.35;

AND IN THE MATTER OF a Decision of the Superintendent of Pensions pursuant to Section 88 of the Pension Benefits Act, 1987;

AND IN THE MATTER OF a Hearing of the Pension Commission of Ontario pursuant to subsection 90(8) of the Pension Benefits Act, 1987;

BETWEEN:

THE CANADIAN UNION OF PUBLIC EMPLOYEES, THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION, THE SERVICE EMPLOYEES' INTERNATIONAL UNION, JOHN A. ASKIN, ROBERT HEBDON AND BRUCE LAND, Applicants

- and -

THE ONTARIO NURSES ASSOCIATION, Applicant

- and -

THE ONTARIO HOSPITAL ASSOCIATION, Respondent

- and -

THE SUPERINTENDENT OF PENSIONS, Interventent

This matter came before the Pension Commission of Ontario (the "Commission") as an appeal from a decision of the Superintendent of Pensions (the "Superintendent") pertaining to the administration of the Hospitals of Ontario Pension Plan ("HOOPP"). The Superintendent's decision was issued April 28, 1989 (the "Decision"). In it, the Superintendent declined to make an Order under subsection 88 (1) of the Pension Benefits Act, 1987 (the "Act") as had been requested by the applicants. An initial application by the Respondent to have the matter dismissed on the basis of a lack of jurisdiction in the Commission was unsuccessful. A hearing into the merits was held on April 19, 1991.

FACTS

HOOPP is a large multi-employer pension plan ("MEPP") with over three hundred participating hospitals and related employers and covering approximately 70 thousand employees in the hospital field in Ontario. The four Applicant unions (the "Unions") and the Ontario Nurses Association ("ONA") together represent approximately 60% of HOOPP membership. The Ontario Hospital Association ("OHA") is an association of the contributing member hospitals; as well, it is an employer that participates in HOOPP as approximately 140 OHA employees are active members of the plan.

The original HOOPP plan text and trust agreement were effective January 1, 1960.

The relevant plan provisions include the following.

1) DEFINITIONS

In this Plan and in the Trust Agreement the following words and phrases shall have the following meanings respectively, unless a different meaning is plainly required by the context.

...

"Pension Committee" shall mean the Committee appointed by the Association for the purpose of administering the Plan in accordance with the provisions thereof.

"Pension Trust Fund" shall mean the assets for the time being in the hands of the Trustees under the Trust Agreement.

"The Plan" shall mean this Pension Plan for the Employees of the Contributing Member Hospitals and as amended from time to time.

...

"Trust Agreement" shall mean the Trust Agreement between the Ontario Hospital Association and the Trustees, dated as of January 1, 1960, and amended from time to time.

"Trustees" shall mean the National Trust Company Limited and Toronto General Trust Corporation or other Trustees or Trustee appointed by the Association from time to time under the Trust Agreement.

...

3) PENSION TRUST FUND

All contributions of the Members and the Contributing Member Hospitals will be paid into the Pension Trust Fund. The Pension Trust Fund will be administered by the Trustees in accordance with the terms of the Trust Agreement.

A copy of the Trust Agreement may be examined by a Member at any reasonable time at the Office of the Association or the Contributing Member Hospitals by which he is employed.

All benefits under the Plan will be paid out of the Pension Trust Fund.

4) Administration of the Plan

The General administration of the Plan shall be vested in the Pension Committee.

Other plan provisions dealt with eligibility, retirement, contributions, the amount of the pension benefit, termination of membership, death benefits and optional types of benefits.

Relevant portions of the Trust Agreement include the following

WITNESSETH...

WHEREAS: a Pension Committee (hereinafter referred to as the "Committee") has been appointed by the Association to administer the Plan subject to the terms and provisions of the Plan and this Agreement; and

WHEREAS: it is deemed advisable that the funds irrevocably contributed for the payment of benefits under the Plan be held in trust in a trust fund (hereinafter referred to as "the Fund") for the exclusive benefits of such employees or their beneficiaries or personal representatives as shall from time to time be entitled to participate in the benefits provided by the Plan;

...NOW THEREFORE, in consideration of the premises and of the mutual covenants herein contained the Association and the Trustees do hereby covenant and agree covenants as follows:

1. The Association hereby establishes the Fund and trust, consisting of such sums of money and such property acceptable to each of the Trustees as shall from time to time be received and held separately by each of the Trustees together with the earnings and profits there from. ... No part of the corpus or income of the Fund..., shall ever revert to the Association or to any contributing member hospital or be used for or diverted to purposes other than for the exclusive benefit of such persons as shall from time to time be entitled to participate in the benefits provided by the Plan.

...

13. Except as otherwise specifically provided in the Plan, the Committee shall have complete control and authority in event of a dispute or otherwise to determine the rights and benefits of any employee of a Contributing Member Hospital or retired employee, to or out of the Fund and under or in respect of the Plan and to determine, adjust, settle and enforce all claims, demands or other actions against the Fund.

As can be seen, both the plan text and the trust agreement provided that a Pension Committee be appointed by the OHA "for the purpose of administering the Plan". A representative from each of the Unions was appointed to the Pension Committee as were trustees or staff members from contributing member hospitals across Ontario and representatives from the Ministry of Health.

On or about June 1st, 1988, the OHA proposed to amend the HOOPP plan text to designate itself as the Plan administrator. Shortly thereafter, counsel for the Unions applied to the Superintendent for an order under subsection 88(1) of the Act on the basis that:

...HOOPP is a multi-employer pension plan ("MEPP") created pursuant to a trust agreement and that it must comply with the requirements of Section 8(1)(e) of the Act. Such a MEPP must have 50% representation from the

Plan Members on its Board of Trustees.

In subsequent submissions to the Superintendent, the Unions and the ONA argued that even if HOOPP was not required to be administered pursuant to clause 8(1)(e), the OHA could not be an appropriate administrator of the Plan.

On April 28, 1989 the Superintendent issued the Decision in which he held that HOOPP was a MEPP as defined in section 1 of the Act. However, he went on to find that HOOPP was not established pursuant to a trust agreement as contemplated by subsection 8(1) of the Act and that in any event, the Act does not require administration of a MEPP by a Board of Trustees.

The Superintendent's finding that HOOPP is a MEPP has not been challenged. As the other two findings are disputed, the Superintendent's reasoning on those points is set out in full.

A review of the constating documents indicates that HOOPP was established pursuant to a resolution of the Board of Directors of OHA with an effective date of January 1, 1960.

The original plan document dated October 21, 1959 defines the term "Trust Agreement" as the "Trust Agreement between the Ontario Hospital Association and the Trustees dated as of January 1, 1960, and amended from time to time". The plan document then goes on to specify that the "Trustees" are "the National Trust Company and Toronto General Trusts Corporation or other Trustees, or Trustee appointed by the Association from time to time under the Trust Agreement".

The powers granted to the Trustees in the Trust Agreement do not include any provisions regarding the determination of benefits, entitlements, contribution requirements, vesting or membership requirements normally found in a pension plan. In fact, the very opposite is provided. Section 18 of the Trust Agreement is as follows:

No term or provision of this Agreement shall be construed or interpreted as imposing upon the Trustees any obligation to see to the carrying out of any of the terms or provisions of the Plan.

The Trustees appointed are as contemplated in Section 50(c) of Ontario Regulation 708/87.

It is clear from a review of the Trust Agreement that it contemplated corporate trustees who assumed "fiduciary responsibilities for holding and managing the Fund", (see the opening recitations, page 2) rather than a Board of Trustees charged with the responsibility of managing the pension plan.

...

In my view, the section is permissive in that a MEPP may have any of the options set out in subsection 8(1), clauses (a) through (f). I am persuaded to this conclusion by, inter alia, the use of the word "or" in the penultimate clause in the subsection. I find that section 8(1)(e) is simply an option that is only permitted to MEPPs, by virtue of the opening words "if the pension plan is a multi-employer pension plan" of that clause.

In my view, the OHA falls within the definition contained in Section 8(1)(a) of the Act, which states:

A pension plan is not eligible for registration unless it is administered by an administrator who is,

(a) "the employer or employers"...

In light of the above, I refuse to issue the order as requested by the Unions and the ONA.

However, the Superintendent further found that the proposed amendment constituted a change which required that notice, containing an explanation of the amendment and inviting comments thereon to be submitted to the administrator and the Superintendent, had to be given to members pursuant to subsection 27(1) of the Act. This ruling was based on his view that

"... the rights of the members have been adversely affected in that the representatives of the four trade unions who formerly were responsible as part of the Pension Committee for the administration of the plan, no longer have that status."

At the time of the hearing, no such notice to members had been given.

ISSUES

The issues for resolution by the Commission are whether:

- (a) HOOPP was established pursuant to a trust agreement within the meaning of clause 8(1)(e) of the Act;
- (b) clause 8(1)(e) is mandatory and applies to all MEPPs established pursuant to collective agreements or trust agreements; and
- (c) whether the OHA can be a proper administrator of HOOPP.

THE LEGISLATION

Those sections of the Act which will be referred to in our judgment are set out below.

Subsection 8(1) A pension plan is not eligible for registration unless it is administered by an administrator who is,

- (a) the employer or employers;
- (b) a pension committee composed of one or more representatives of,
 - (i) the employer or employers, or any person, other than the employer or employers, re-

- quired to make contributions under the pension plan, and
 - (ii) members of the pension plan;
- (c) a pension committee composed of representatives of members of the pension plan;
- (d) the insurance company that provides the pension benefits under the pension plan, if all the pension benefits under the pension plan are guaranteed by the insurance company;
- (e) if the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants; or
- (f) a board, agency or commission made responsible by an Act of the Legislature for the administration of the pension plan.

Section 10 ...

- 2) The documents that create and support a multi-employer pension plan pursuant to a collective agreement or a trust agreement shall set out the powers and duties of the board of trustees that is the administrator of the multi-employer pension plan.

Section 86

The following are not guaranteed by the Guarantee Fund:

...

- 4. Pension benefits provided under a multi-employer pension plan.

CLAUSE 8(1)(e)

In order for clause 8(1)(e) to be applicable, the following conditions must be met:

- (i) the pension plan must be a multi-employer pension plan; and
- (ii) it must be established pursuant to a collective agreement or trust agreement.

As previously stated, no one disputes the Superintendent's finding that HOOPP is a multi-employer pension plan. Although the point was not argued before us, we accept the Superintendent's finding on that point.

It is agreed amongst all parties that a collective agreement was not involved in the creation or establishment of HOOPP. Therefore, the only issue that must be resolved in order to determine whether clause 8(1)(e) applies is whether HOOPP was "established" pursuant to a "trust agreement". It is only if clause 8(1)(e) is found to apply that the second issue must be addressed, namely, whether the clause is mandatory or permissive in nature.

Was HOOPP established pursuant to a trust agreement? To answer this question, we must consider the meaning of both the word "established" and the phrase "trust agreement".

In the Decision, the Superintendent found that "HOOPP was established pursuant to a resolution of the Board of Directors of OHA...". While we accept that the OHA Board of Directors passed a resolution providing for the creation of HOOPP, we find it inaccurate to characterize the resolution of the Board of Directors as the instrument responsible for establishing HOOPP.

It is clear that the legislature ascribed some difference in meaning to the words "established" and "create". The word "create" is used throughout the Act as, for example, in subsection 10(1) which discusses the information that must be contained in "The documents that create and support a pension plan...". (emphasis added).

In that subsection, the word "create" appears to mean "to bring into being" or "to cause to exist". Does "established" mean the same thing? Common sense alone would suggest that the two words mean two different things. Had the legislature intended to say or mean "create" in the subsection 10(1) sense, it would have been an easy matter to have used the word. With the sections as close together as they are, we are drawn to the conclusion that "establish" must mean something different than "to bring into being" (i.e. to create).

A brief excursion to the Oxford English Dictionary shows that the word "established" differs from "create" in that it imports a sense of permanency which the word "create" does not. "Established" appears to mean not the mere act of setting up of the pension plan but rather instituting the plan and seeing that it becomes functional with a certain degree of permanence and stability. With that meaning of the word "established" in mind we must ask what caused HOOPP to become functional or fully operational in some ongoing sense? From a reading of the plan and trust documentation, it appears that HOOPP was not effectively established until both the pension plan and the trust agreement were in place. Together, those two documents establish the plan and the fund, identify and prescribe the duties and responsibilities of the administrator, set out the rights and obligations of the employers and plan members, and prescribe the responsibilities and terms of the administration, management and investment of the funds. Absent the trust agreement, the fund is not established, no trustee is appointed and there is no delineation of the duties and responsibilities of the trustee with respect to administration and investment of the fund. The Superintendent, in the Decision, states that the powers granted to the trustees in the Trust Agreement do not include any provisions regarding the determination of benefits, entitlements, contribution requirements, vesting, or membership requirements normally found in a pension plan and, in fact, legislatively required by subsection 10(1). However, the fact that a pension plan text sets out the determination of benefit entitlements and

the like does not mean that the plan is “established” pursuant to it. The plan text contains the contractual obligations of the parties, one to the other, but a pension plan as defined in the Act is “a plan organized and administered to provide pensions for employees”. Plans of this sort cannot be operative, and thereby provide pensions, unless and until a funding mechanism is in place. It is the Trust Agreement which creates the fund, sets up the scheme for administration and investment of those funds and thereby created the ability to provide pensions. Thus, the plan was established pursuant to the plan text and the Trust Agreement.

Clause 8(1)(e) refers, however, to the plan being established pursuant to a trust agreement. Does the fact that both the plan text and the trust deed were necessary to “establish” HOOPP, that is, to make it functional in an ongoing sense render clause 8(1)(e) inapplicable? The phrase “trust agreement” is not a defined term within the legislation. In accordance with section 10 of the Interpretation Act, RSO 1980, c.219 the words should be given a liberal interpretation. As both documents were necessary to establish the plan, it is our view that it can fairly be said that HOOPP was established pursuant to a trust agreement. Alternatively, as the two documents specifically refer to one another and rely on each other, it can be said that they are but one document on the basis of the doctrine of incorporation by reference. As one of those documents is a trust agreement, again in our view it can be said that HOOPP was established pursuant to a trust agreement. Thus, it is our view that the pension plan was established pursuant to a trust agreement.

CLAUSE 8(1)(e) MANDATORY OR PERMISSIVE

Having found that HOOPP was established pursuant to a trust agreement, it becomes critical to determine whether clause 8(1)(e) is mandatory or permissive. We find that it is mandatory for the following reasons.

First, subsection 10(2) as set out above, stipulates that the documents that create a multi-employer pension plan pursuant to a trust agreement “shall set out the powers and duties of the board of trustees that is the administrator of the multi-employer pension plan”. (emphasis added)

A plain reading of subsection 10(2) shows that the documents that create a MEPP must spell out the duties of the board of trustees. If no such board is required, the requirement is not only unnecessary it is ridiculous.

Moreover, to treat clause 8(1)(e) as permissive would be to place it in conflict with subsection 10(2). It is trite law that where provisions of a statute can be read together, the construction placed on them should enable such a reading. Treating clause 8(1)(e) as mandatory precludes a conflict with subsection 10(2) and renders them internally consistent.

Second, although the word “or” exists between the penultimate and last subsections, the provisions of clause 8(1)(e) must be read in the context of the surrounding provisions and the scheme and purpose of the legislation. The surrounding provisions include clause 8(1)(f) which sets out that an administrator can be a board, agency or commission made responsible by an act of the legislature for the administration of the pension plan. If we take the view that section 8 contains a shopping list of administrators and that it is permissible to choose from the list, it would be open to pension plans to overthrow the dictates of the legislature. For example, the legislature stipulated that a commission was to be responsible for the administration of the Public Sector Superannuation Fund. Under a permissive reading of the clause, it would be open to the administrator of the fund to pass a plan amendment to change that requirement and allow a single employer [or other body listed in clause 8(1)(a) - (e)] to become the administrator. Surely, this could not have been the intent of the legislature.

If clause 8(1)(f) is the mandatory form of administrator for legislatively dictated plans then it is open to read clause 8(1)(e) as mandatory too. The “or” in the subsection loses its original appearance of making each type of administrator in the list an option to all others.

Third, MEPPs are different from other private pension plans. There are risks to the employee members of MEPPs that do not exist for members of other types of plans. The most obvious is that contained in subsection 86(4), set out above, which states that their pension benefits are not guaranteed by the Pension Benefits Guarantee Fund. In view of that, it is understandable that the creators of the Act would have viewed the role of the administrator of a MEPP differently and mandated employee participation through clause 8(1)(e).

Fourth, requiring employee involvement in the administration of MEPPs such plans would meet other objectives of the Act which are especially relevant for MEPPs such as ensuring adequate disclosure of information to members.

Fifth, no other type of pension plan has a specification as to the composition of the administrator. Why would the clause tie MEPPs to a particular type of administrator if it was not the intention that the clause apply?

Specifying the composition of the administrator and linking it to MEPPs again implies that the form the administrator is to take is a requirement.

Sixth, if clause 8(1)(e) is not mandatory, it becomes virtually meaningless. That is, if all MEPPs were free to choose from clauses 8(1)(a) - (f) as a shopping list of potential administrators, one wonders how many MEPPs would be governed by boards of trustees.

The construction of clause 8(1)(e) cannot be done in isolation. It must be considered within the context of the purpose of the Act which was to provide minimum standards for, and the regulation of, different types of pension plans in Ontario. Based on these considerations, it is our view that in clause 8(1)(e) of the Act, the legislature

set out the most appropriate method of administering a MEPP, and therefore the clause is mandatory.

In any event, the OHA would be an inappropriate administrator because clause 8(1)(a) sets out that an appropriate administrator is "the employer and employers" (emphasis added). The OHA is not "the employer", it is a single employer and a rather small one at that.

ORDER

The Commission hereby directs the Superintendent to issue an Order under subsection 88(1) of the Act that HOOPP is a multi-employer pension plan created pursuant to a trust agreement and that it must comply with the requirements of clause 8(1)(e) of the Act by having a minimum of 50% representation from plan members on its Board of Trustees.

DATED AT TORONTO this 26th Day of June, 1991.

"E. Gillese", Chair

"D. Collins"

"D. Hanscom"

IN THE MATTER OF the Pension Benefits Act, 1987, S.O. 1987, c.35

AND IN THE MATTER OF a proposal by the Superintendent of Pensions to make an Order under section 88 of the Pension Benefits Act, 1987 respecting the American Federation of Musicians' and Employers' Pension Welfare Fund (Canada)

AND IN THE MATTER OF a hearing pursuant to section 90 of the Pension Benefits Act, 1987

BETWEEN:

D. GORDON BADGER AND MEYERS

RESTAURANT MANAGEMENT CORPORATION, Applicant

- and -

**THE SUPERINTENDENT OF PENSIONS,
Respondent**

ORDER

WHEREAS by Notice of Proposal to Make an Order dated December 12, 1989 the Superintendent of Pension did propose to make an Order under section 88 of the Pension Benefits Act, 1987 (hereinafter referred to as the "Act") requiring the Applicants Gordon Badger and Meyer's Restaurant Management Corporation to remit certain contributions to the American Federation of Musicians' and Employers' Pension Welfare Fund (Canada);

AND WHEREAS, pursuant to section 90 of the Act, the Applicant, Gordon Badger requested a Hearing before the Pension Commission of Ontario with respect to the aforesaid Notice of Proposal to Make an Order;

AND UPON hearing counsel for the Applicant, Gordon Badger, and upon hearing counsel for the Superintendent, no one appearing on behalf of the Applicant, Myers Restaurant Management Corporation, and upon receiving and considering evidence filed by the parties in attendance;

IT IS HEREBY ORDERED THAT Gordon Badger and Meyers Restaurant Management Corporation do pay, within 30 days of the date of this Order, the sum of \$5,266.93, plus interest from the date of the Order at the rate stipulated in subsection 21(9) of Ontario Regulation 708/87 as amended to Ontario Regulation 589/89 to the Act, to the American Federation of Musicians' and Employers' Pension Welfare Fund (Canada).

DATED AT TORONTO this 27th day of June, 1991.

"M. Joseph Regan", Chair

"Deborah Hanscom"

"Glenn Pattinson"

Applications Approved Since June, 1991

Applications Approved Under Clause 7a(2)(c) of the Regulation and Subsection 79(1) of the PBA, 1987 - Request for Return of Surplus Pursuant to a Court Order

At the Commission meeting held July 18, 1991, the Commission ordered a Stay of its Decision of May 23, 1991.

(a) The Retirement Plan for Salaried Employees of LaSalle Machine Tool of Canada, Limited (C-12096)

Commission Stay of Decision: A Stay of a May 23, 1991 Commission Decision (published PCOB July, 1991, Volume 2, Issue 2, page 24) was ordered by the Commission at its meeting held July 18, 1991 until the Commission is satisfied that:

- a) for the known beneficiaries, the beneficiaries' entitlements, including surplus under the plan, are paid in full; and
- b) for those beneficiaries who have not yet been located, provision has been made for the payment of their benefit entitlements, including surplus.

Applications Approved Under Clause 7a(2)(b) of the Regulation and Subsection 79(1) of the PBA, 1987 - Surplus Withdrawal on Wind Up

At the Commission meeting held June 27, 1991, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

(a) Woodbridge Foam Corporation Pension Plan for Executive Employees (C-15582)

Refund of plan surplus amounting to \$133,255 as at December 31, 1989 plus investment earnings thereon to the date of payment.

(b) Pension Plan for Senior Executives of Monte Carlo Restaurant (C-15901)

Refund of plan surplus amounting to \$58,600 as at September 30, 1987 plus investment earnings thereon to date of payment.

(c) Wharton Industrial Development Ltd. (Widcor) Pension Plan (sole member plan) (C-103028)

Refund of plan surplus amounting to \$39,558 as at December 31, 1989 plus investment earnings thereon to date of payment.

(d) Pension Plan for Senior Executive Employees of Progressive Moulded Products (Downsview) Limited (C-15995)

Refund of plan surplus amounting to \$96,700 plus investment earnings thereon to the date of payment.

At the Commission meeting held August 29, 1991, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the refund of plan surplus.

(a) Pension Plan for Executives of Centre Leasehold Improvements Limited (C-16123)

Refund of plan surplus amounting to \$99,718.55 as at December 31, 1989 plus investment earnings thereon to the date of payment on the condition that the surplus will then be paid to the active plan member in accordance with the written agreement of the employer and the member of the plan.

(b) Pension Plan for Employees of J. R. Menard Limited (C-15936)

Refund of plan surplus amounting to \$70,407 as at February 1, 1989 plus investment earnings thereon to date of payment.

(c) Pension Plan for Group "A" Employees of Sports Equipment of Toronto Limited (C-15539)

Refund of plan surplus amounting to \$123,874 as at September 30, 1990 plus investment earnings thereon to date of payment.

Applications Approved under Subsection 64(8) of the PBA, 1987 - Requests for Return of Member Contributions

At the Commission meeting held June 27, 1991, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of required contributions.

(a) Johnson & Higgins Willis Faber Ltd. Retirement Income Plan (C-2785)

Refund of required contributions in the amount of \$32,120.15 as at April, 1988 plus credited interest to the date of payment, after the contributions are deemed to be additional voluntary contributions.

At the Commission meeting held July 18, 1991, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

(a) Ontario Training Corporation Pension Plan for Salaried Employees (C-103566)

Refund of member contributions in respect of four members of the plan in the aggregate amount of \$2,877.62 for the fiscal year 1990, on the condition that the plan is amended to provide for the refund. This consent shall be effective on the date the plan amendment is registered by the Superintendent.

(b) Freightliner of Canada Ltd. Retirement Plan for Non-Union Employees (C-100162)

Refund of member required contributions in the amount of \$141,000 as at January 1, 1990 plus interest to the date of distribution pursuant to subsection 64(8) of the Act on the condition that the pension plan is amended to provide that, in addition to the normal cost and special payments required by the Act and the regulations,

- a) the administrator shall pay 100% of the commuted value of any pension, deferred pension, or ancillary benefit that was or is transferred during the period commencing January 1, 1990 and ending December 31, 1994 and that any resulting transfer deficiencies shall be remitted to the pension fund by the employer as of the date of transfer; and
- b) if the pension plan winds up at any time prior to December 31, 1994, the employer shall make a lump sum payment to the pension fund equal to the amount

required to increase the transfer ratio to the level that would have existed at that time if the employer had remitted, at the date of the refund, a lump sum amount equal to the amount of refunded contributions.

The Commission's consent shall be effective as of the date that the amendment is registered.

(c) Pension Plan for the Employees of Canadian Produce Marketing Association (C-7316)

Refund of member required contributions in the aggregate amount of \$209,480.13 plus interest as at December 31, 1988, after the required contributions are converted to additional voluntary contributions by virtue of the plan amendment. This consent shall be effective on the date the plan amendment is registered by the Superintendent.

Applications under Subsection 79(4) of the PBA, 1987 - Requests for Return of Employer Payments or Overpayments

At the Commission meeting held June 27, 1991, the Commission did not consent to the refund of overpayment.

(a) Retirement Plan for NYAB Vicom, a Division of General Signal Limited (C-17809)

The Commission did not grant consent to the application for refund of an overpayment of contributions as such action may be inconsistent with the terms of the plan.

At the Commission meeting held July 18, 1991, the Commission consented pursuant to subsection 79(4) of the PBA, 1987 to the refund of overpayments.

(a) Ontario Training Corporation Pension Plan for Salaried Employees (C-103566)

Refund of overpayments of \$2,877.62 to the employer subject to staff receiving written confirmation that funding for the Member Account (employer/member) and the Supplementary Benefit is in two separate accounts.

Application Approved under Subsection 30(3) of the Regulation - Request for Allocation of Funds from the Pension Benefits Guarantee Fund

At the Commission meeting held August 29, 1991, the Commission consented, pursuant to subsection 30(3) of Ontario Regulation 708/87, to an allocation of funds from the Pension Benefits Guarantee Fund.

(a) Pension Plan for the Employees of Maybank Foods Inc. (C-19298)

Allocate from the Pension Benefits Guarantee Fund to the Pension Plan for the Employees of Maybank Foods Inc. the amount equal to the difference between:

- a) the total sum required to make the monthly pension payments under the plan which have been approved by the Superintendent of Pensions in his letter dated August 19, 1991; and,
- b) the amounts that result when the total sum of those monthly pension payments is multiplied by the wind-up funded ratio for the Maybank pension plan, as determined by the Administrator on the advice of the plan Actuary,

with the exact amount to be confirmed by the Administrator once all eligible persons have made their election, but not to exceed a one time payment of \$917,000 as at July 31, 1991 and on-going payments of \$69,975 per month commencing August 31, 1991 to supplement pensions in pay to retirees to the level guaranteed by the Pension Benefits Guarantee Fund.

Application Approved Under Section 106 of the PBA, 1987 - Request for Extension of Time for Filing Actuarial Report

(a) Ontario Teachers' Pension Plan

At the Commission meeting held June 27, 1991, the Commission, pursuant to section 106 of the PBA, 1987, consented to an extension of time to September 30, 1991, for the Ontario Teachers' Pension Plan Board to file their actuarial report.

Contacts for Policy Areas and Enquiries

Actuarial	Teck Go	972-5799
Annual Information Returns	Rose Ann Drakes	972-5782
Communications	Judith Chalmers	972-5800
Freedom of Information Requests	Ken Doiron	972-5798
General Enquiry - Secretariat	Lynn Barron	972-5825
Policy Issues	Cynthia James	972-5826
	Susan Ellis	972-5001
Mailing List	Catherine Helwig	972-5802
PCO Bulletin/Compliance Assistance Guidelines	Judith Chalmers	972-5800
Pension Benefits Guarantee Fund (Administration)	Margaret Fennell	972-5785
Plan Registration-Forms		972-5784
Registrar/Secretary to the Commission	Mary Crocker	972-5815
Statements of Investment Policies & Goals/Investment Policy Returns	Jules Huot	972-5821

Contacts for Plan-specific Enquiries

Plan-specific enquiries and submissions should be directed to Pension Officers, Pension Plans Branch:

Type of Plan or Submission	Alpha Range	Pension Officer	
<u>On-going Defined Benefit Plans</u> (also includes partial wind ups, sales, mergers and conversions)	A-D E-M N-R S-Z	Jaan Pringi Rosemine Jiwa-Jutha Mark Henry	972-5761 972-5817 972-5816 972-5777
<u>On-going Defined Contribution Plans</u> (also includes partial wind ups, sales, mergers and conversions)	A-J K-Z	Bill Qualtrough Elizabeth Carter	972-5762 972-5774
<u>Multi-employer Plans</u>	All	Bill Qualtrough	972-5762
Restated Plan Documents	All	George Bahrynowski	972-5773
Full Wind Ups	All	Jai Persaud	972-5760
Surplus Applications	All	Robin Gray	972-5775
Insolvencies	All	David Gordon	972-5824

Are You On Our Mailing List?

Owing to mailing and production costs the PCO anticipates **not** sending future Bulletins and Compliance Assistance Guidelines to our mailing list of registered pension plans indefinitely (you are on this list if the mailing label shows your plan's provincial registration number).

If you would like to be on our supplementary mailing list to continue to receive the PCO Bulletin and Compliance Assistance Guidelines please write, or fax Catherine Helwig at 963-9585 or call directly at 972-5802.

The PCO Bulletin is published by the Pension Commission of Ontario, 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2 (416) 963-0522 fax (416) 963-9585

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THE PENSION COMMISSION OF ONTARIO BULLETIN

February, 1992

Vol. 2, Issue 4

The Coverage Challenge



IN THE NOVEMBER, 1991 PCO Bulletin we reported on *The Public Forum on Pensions*, a two day conference jointly sponsored by the CPC/CAPSA/CIA held last September. In that issue the report summarized speakers' addresses with the exception of the session chaired by Professor Rob Brown, Department of Statistical and Actuarial Science, the University of Waterloo. In this article we are sharing many problems and obstacles to achieving broader coverage identified by conference participants at Professor Brown's lively session. The barriers provide an extensive though not exhaustive list to challenge all of us who have an interest in preserving the retirement income system.

Several important observations arising from this exercise dealt with the need for greater clarification of what is meant by coverage and how much and which type of individual coverage is adequate. Many participants called for more research on the extent of coverage expressed as a percentage of the population by nature and type of product - RRSP, Group RRSP, CPP/QPP/OAS, and pension plans, as well as personal savings earmarked for retirement.

The barriers to obtaining broader coverage were organized under four general headings: complexity, cost factors, compensation versus benefits, and public comprehension and concern. The points given under each heading are listed generally in order of importance (as indicated by the participants).

Issues of Complexity

- inconsistency of regulatory rules and reporting requirements across jurisdictions;
- inconsistent application of regulatory rules within each jurisdiction;
- a bias against defined benefit plans is created

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owing to complexity;

- variation in rules depending on types of plans e.g. public v. private sector, large v. small plans;
- contrast between defined benefit and Group RRSPs in terms of flexibility;
- RRSPs are not locked-in - an obstacle to meaningful retirement income coverage;
- federal tax rules adds layer of complexity;
- conflicts between tax and pension legislation;
- no alternative to the life annuity; and
- uncertainty about future pension legislation.

Cost Factors

- regulatory overkill;
- every change to tax and pension legislation increases administration costs;
- establishing a new defined benefit plan is costly owing to funding (solvency) requirements;
- lack of uniformity among jurisdictions;
- operating a pension committee costly especially in a national plan;
- fear of the prospect of mandated indexation, especially if it extends to deferred vesteds;
- fear of the prospect of new legislation with retroactive impact;
- effect of shorter business cycles and recessions on establishing pension plans;
- small employers cannot establish defined benefit pension plans;
- rising CPP/QPP contributions leave little contribution room for an integrated defined benefit plan;
- the aging workforce has a future cost impact on the system; and
- asskilled labour becomes increasingly scarce, employers have to offer quality benefits and pension plans to attract staff.

Cash Compensation versus Benefits

- low income workers are in pressing need of cash compensation not compensation deferral - this is exacerbated by the GIS clawback;
- in a voluntary system, generally people prefer more salary instead of deferred pension benefits - human nature factor;
- the lifestyle of two-incomes does not lend itself to saving for retirement in a defined benefit pension plan;
- a highly mobile workforce prefers a defined contribution plan with immediate vesting;

- there is not always gender equity in benefits; and
- unions may influence plan design, type and the mix between salary and deferred pension benefits.

Public Comprehension and Concern

- Canadians do not seem interested in retirement financial planning and show a lack of understanding and knowledge of what their pension plans really offer;
- Canadians often think that the government will take care of them in retirement;
- pension plans are too complex to explain; and
- there has been a discrediting of private pension plans.

Some ideas pointing to solutions entered into the discussion such as,

- maybe coverage should be mandated;
- RRSPs should be locked-in;
- perhaps there should be a centralized regulatory system;
- there is a need to communicate complex pension information to the plan participant in an easy-to-understand manner;
- there is a pressing need for more education in financial planning and retirement financial planning;

One could react to the barriers listed above as indicative of everything that is wrong with the retirement income system, especially pensions - the obstacles taken together can be overwhelming. On the other hand, the picture could be viewed as a multi-faceted retirement income system with considerable strengths and future potential, but in need of simplification, co-ordination, greater flexibility, balancing and when that is achieved, fine-tuning.

Today there are many fortunate people approaching retirement for whom the three main streams comprising retirement income - government, employment and personal sources - will prove adequate. For others - notably, more than 60 per cent of Ontario's labour force today without employer-sponsored pension coverage - the prospect of retirement is frightening. Why?

There are fewer employer-sponsored pension plans or programs with member protections afforded by pension legislation. The quality of benefit delivered by some pension plans is eroding. Government coverage through C/QPP is limited as the result of spotty or low income employment history, and there is slower accumulation of personal wealth owing to shorter business cycles and deepening recessions.

The Forum on Pensions is over...but the opportunity for finding solutions is not lost. Those of us with know-how, creative ability and a commitment to sustaining the retirement income system need to confront the barriers to coverage and continue finding ways to conduct necessary research and bring about rational change.

PCO Initiatives on Coverage

In keeping with the PCO mandate to expand, extend and promote pension coverage in Ontario, there are research and policy initiatives currently underway. One project deals with conducting research and analysis on the retirement income marketplace in Ontario. Another intends to streamline reporting requirements and to attract prospective plan sponsors to the benefits and protections of pension plans through a simplified defined contribution pension plan.

These projects are directly linked. We will discuss them in greater detail in upcoming issues of the *PCO Bulletin*.

We would like to discuss the retirement income marketplace in Ontario with interested parties. If you are a corporation, association or institution willing to share information or research already conducted on this subject please contact Judith Chalmers, Secretariat or call (416) 972-5800.

Notices

Legislation and Amendments

Revised Statutes of Ontario 1990 (R.S.O. 1990) - Now Released

ALL PROVINCIAL legislation is consolidated and restated every ten years under the authority of the Statutes Revision Act, 1989. Accordingly, Ontario's pension legislation hereafter will be referred to as the Pension Benefits Act, R.S.O. 1990 not the Pension Benefits Act, 1987. The Pension Benefits Act, R.S.O. 1990 came into force on January 1, 1992.

The R.S.O. 1990 version of the PBA does not contain section 19 and subsection 48(2). Although not consolidated in the new version of the PBA, **these provisions have not been repealed**. Therefore, all sections of the legislation after section 18 are renumbered to reflect the exclusion of section 19 from the consolidated version. For instance, section 43 transfer rights is now called section 42 and so forth.

The R.R.O. 1990 (the Revised Regulations of

Ontario, 1990) to be published later this year, will reflect the renumbering of the PBA as described above.

Those making applications or submissions to the PCO should take into consideration revised numbering changes and refer to sections under the PBA as published in the R.S.O. 1990. The Table of Concordance is provided for the user's convenience on page 14.

There will not be an office consolidation of the statute and regulations until completion of the R.R.O. later this year. Copies of the R.S.O. 1990 and, **later this year**, the office consolidation are available from

Publications Ontario
880 Bay Street
Toronto, Ontario
M7A 1N8
416-326-5300
1-800-668-9938

Amendment to the Regulation Regarding Filing and Annual Fee Increases

The Regulation, O.Reg. 740/91, was published in *The Ontario Gazette* on January 4, 1992. The regulation has the effect of increasing the maximum registration and annual filing fees.

Regulation to Amend Ontario Regulation 708/87 Made Under The Pensions Benefits Act, 1987

1. Subsection 2(3) of Ontario Regulation 708/87, as remade by section 1 of Ontario Regulation 651/90, is revoked and the following substituted:

(3) The minimum application fee for registration of a pension plan is \$200 and the maximum application fee is \$50,000.

2.- (1) Subsection 15(4) of the Regulation, as remade by section 2 of Ontario Regulation 651/90, is revoked and the following substituted:

(4) Subject to subsection (5), the minimum filing fee for an annual information return is \$200 and the maximum filing fee is \$50,000.

(2) Section 15 of the Regulation, as it read immediately before this Regulation comes into force, continues to apply with respect to an annual information return respecting a fiscal year that ends on or after the 31st day of December, 1990 and before the 31st day of December, 1991.

***Amendment to the Regulation
Regarding Surplus Withdrawal and
Extension of Deadlines***

The regulation, O.Reg. 743/91 was published in *The Ontario Gazette* on January 4, 1992. The regulation has the effect of extending the moratorium on the withdrawal of surplus on wind up in subsection 7a(1) of the Regulation, extending the effective date of surplus-related deeming provisions in subsection 80(2) and (5) of the Act, and of extending the deadline for filing restated plan documents.

**Regulation to Amend
Ontario Regulation 708/87
Made Under The
Pension Benefits Act, 1987**

1. Section 7a of Ontario Regulation 708/87, as made by section 1 of Ontario Regulation 100/88 and amended by section 1 of Ontario Regulation 422/88, section 1 of Ontario Regulation 737/88, section 1 of Ontario Regulation 651/89 and section 1 of Ontario Regulation 650/90, is revoked and the following substituted:

7a.- (1) No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless,

(a) the payment is to be made to or for the benefit of members, former members and other persons, other than the employer, who are entitled to payments under the pension plan on the date of wind up; or

(b) the payment is to be made to an employer with the written agreement of,

(i) the employer,

(ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and

(iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.

(2) Despite subsection (1), a payment may be made from surplus out of a pension plan that is being wound up in whole or in part if,

(a) the payment would have been

permitted by this section as it read immediately before the 18th day of December, 1991; and

(b) notice of proposal to wind up the pension plan was given to the Superintendent before the day this subsection comes into force.

(3) Subsections (1) and (2) do not apply after the 31st day of December, 1994.

2.- Subsections 43(2a), (2b), (4) and (5) of the Regulation, as remade by section 2 of Ontario Regulation 650/90, are revoked and the following substituted:

(2a) Every employer who maintained a pension plan on the 1st day of January, 1988 is exempt from subsection 19(1) of the Act for the period ending on the 31st day of December, 1992.

(2b) The parties to a collective agreement or arbitration award governing a pension plan described in subsection 19(2) of the Act are exempt from that subsection for the period ending on the 31st day of December, 1992.

.....

(4) Every pension plan that, on the 1st day of January, 1989, did not provide for the withdrawal of surplus money while the pension plan continues in existence is exempt from subsection 80(2) of the Act for the period ending on the 31st day of December, 1994.

(5) Every pension plan that, on the 1st day of January, 1989, did not provide for payment of surplus money on the wind up of the pension plan is exempt from subsection 80(5) of the Act for the period ending on the 31st day of December, 1994.

The fee regulation was distributed directly to the 112 pension plans affected by the change to the maximum annual filing fee. The surplus/deadline regulation was distributed via our Rapid Communications Network in December, 1990.

***Amendment to the Regulation Regarding
Investment of the Teachers' and Public Service
Pension Plans***

The regulation, O.Reg. 760/91, was published in *The Ontario Gazette* on January 11, 1992. The regulation has the effect of making the Teachers' Pension Plan and the Public Service Pension Plan subject to subsection 22(1) (prudent person) and section 62 (investment regulations) of the PBA. All references to statute provisions are to statutes restated in the R.S.O. 1990.

**Regulation to Amend
Ontario Regulation 708/87
Made Under The
Pension Benefits Act, 1987**

1.-(1) Paragraphs 1 and 2 of subsection 43(1) of Ontario Regulation 708/87 are revoked.

(2) Subsection 43(3) of the Regulation is revoked.

(3) Subsection 43(3a) of the Regulation, as made by section 1 of Ontario Regulation 160/89, is revoked.

(4) Subsection 43(3b) of the Regulation, as made by section 2 of Ontario Regulation 589/89, is revoked.

2. The Regulation is amended by adding the following sections:

43a. *The Teachers' Pension Plan continued under the Teachers' Pension Act is exempted from the following:*

1. *Subsection 38(1) of the Act.*
2. *Section 62 of the Act, with respect to investments made before the 1st day of January, 1992.*
3. *Paragraphs 2, 3, 4 and 5 of subsection 4(3) of this Regulation.*
4. *Section 26 of this Regulation.*
5. *Section 33 of this Regulation.*
6. *Section 72 of this Regulation, with respect to the plan fiscal years that end on the 31st day of March in 1989 and 1990.*

43b. *The Public Service Pension Plan continued under the Public Service Pension Act is exempted from the following:*

1. *Subsection 22(1) of the Act.*
2. *Section 62 of the Act.*
3. *Paragraphs 2, 3, 4 and 5 of subsection 4(3) of this Regulation.*
4. *Section 26 of this Regulation.*
5. *Section 33 of this Regulation.*
6. *Section 72 of this Regulation, with respect to the plan fiscal years that end on the 31st day of March in 1989 and 1990.*

3. This Regulation comes into force on the 1st day of January, 1992.

Court Decisions

The following notice respecting a decision of the Ontario Court is expected to be of interest to professionals practising in the pension field.

**Re: Governing Council of the Salvation Army, Canada East, Will Pratt and Arthur Waters v. the Attorney General of Ontario
Court File # 1115/89 released January 21, 1992**

The applicants, the Governing Council of the Salvation Army Canada East, Will Pratt and Arthur Waters had sought a declaration from the Court that the Pension Benefits Act, 1987 (the "Act") has no application to the Salvation Army Officers' Retirement Plan, (the "Plan").

There were two issues, namely: whether officers of the Salvation Army (the "Army") were "employees" for the purpose of requiring the Plan to be registered under the Act and, if the answer to the first issue was in the affirmative, whether registration of the plan under the Act constituted an infringement of the Applicants' freedom of religion contrary to section 2(a) of the Charter of Rights and Freedoms.

The first issue was decided in June, 1990 when Mr. Justice Henry ruled that Army officers are "employees" for the purpose of requiring the Plan to be registered under the Act.

On the second issue, freedom of religion, Mr. Justice Henry found that the imposition of the Act on the Plan would not infringe the Applicants' freedom of religion.

Background

In 1987 amendments to the Act prohibited discriminate in pension plans on the basis of age, sex or marital status. A concern at the time was based on a determination that the Act should conform with section 15 of the Charter (the equality provisions).

The Army's current plan sets forth different treatment for males and females, and married and single members.

Mr. Justice Henry ruled that amending the Plan to eliminate gender discrimination does not adversely affect the tenets of the Applicants' religion.

Mr. Justice Henry also held that the Applicants had not discharged the onus on them to show that the compulsory provision of retirement allowances violated a tenet of their religion. The Applicants had claimed that the requirement of pension benefits as an obligation on the Army, and a right on the part of the officer, eroded the element of mutual "voluntarism" between the Army and the officer and that such "voluntarism" was fundamental to the officer's freedom of conscience and religion.

Mr. Justice Henry also ruled that any question of exempting the Plan from the operation of the Act was not a matter for the determination of the courts, but rather for the legislature.

Copies of the decision may be obtained for a photocopying fee from Toronto Weekly Court, Room #125, 145 Queen Street West, Toronto, Ontario M5H 2N9. To order, call (416) 327-5463.

Government Proposal

Government Introduces Policy on Solvency Valuation and the Pension Benefits Guarantee Fund

Draft regulations on solvency valuation and the PBGF are expected to be released for industry consultation in March, 1992. The policy was introduced to actuaries representing many Ontario actuarial firms at a meeting held at Queen's Park on Wednesday, January 15, 1992.

The Minister of Financial Institutions, Brian Charlton announced changes to pension regulations on December 19, 1991. These changes recognize the competitive pressures facing Ontario business while balancing the need to secure and protect members' pension benefits.

He indicated that changes to the regulations would relieve solvency funding pressures for certain pension plans, particularly in the manufacturing sector.

Those presenting the Government's proposals at the Queen's Park session included representatives from the Minister's Office, Policy and Planning for the Ministry of Financial Institutions and the PCO.

The purpose of the meeting was to discuss the proposals and get feedback from the actuarial community prior to releasing the draft regulations for formal consultation later this spring.

PCO Announcements

Director of the Secretariat Announces Departure

Priscilla Healy, who became Director of the Secretariat in the spring of 1989 recently announced her resignation from the Pension Commission of Ontario effective January 10, 1992. Ms. Healy took a position with a major benefits consultant in early February.

Ms. Healy has served with distinction since joining the Ontario civil service in 1980, ably contributing to policy development at the Ontario Securities Commission in her role as Legal Advisor to the Commission, and to pension policy as Director of the Secretariat in numerous areas: regulating the investment of plan assets, plan auditing and accounting issues and actuarial issues.

Ms. Healy's understanding of the regulatory

environment and the policy process has had measurable and lasting results on the pension and securities fields. Through speeches, the *PCO Bulletin* and the creation of advisory committees, she has raised awareness about the importance of industry consultation to the policy-making process and the quality of policies and practices.

New Financial Reporting Consultant Joins the PCO

The Superintendent is pleased to announce that Rick Kennedy, C.A. joined the PCO in November, 1991 as its first Financial Reporting Consultant and Chief Accountant. This position has responsibility for formulating auditing and accounting standards and ensuring that regulations dealing with accounting and auditing practices are consistent and compatible with industry standards, generally accepted accounting practices (GAAP) and generally accepted auditing standards (GAAS).

Since graduating from the University of Toronto with a Bachelor of Commerce (B.Comm.) degree in 1982, Mr. Kennedy worked with Arthur Andersen and Company where he earned his C.A. designation. While at that firm, he served on an auditing team specializing in the financial services industry, and assisted in the development and teaching of several training programs specific to the industry. With the emergence of pension auditing issues several years ago, Mr. Kennedy helped develop a standardized work program for fund audits and conducted several such fund audits.

Accounting & Audit Advisory Committee Now Established

The committee will work closely with the Director of the Secretariat and the Financial Reporting Consultant, and will advise the PCO on matters pertaining to auditing and accounting issues as they arise. The following individuals comprise the membership of the recently established Accounting & Audit Advisory Committee:

Bruce Winter, Chairman, Price Waterhouse
Don Cockburn, Ernst & Young
Ken Vallillee, Arthur Andersen & Co.
Bob Sterling, Deloitte, Haskins & Sells
David Ferguson, Peat Marwick, Thorne
Jim Saloman, Coopers & Lybrand
Harvey Beadle, Dunwoody & Co.
Vaike Murusalu, Canadian Institute of Chartered Accountants
Bill Harper, Institute of Chartered Accountants of Ontario

PCO AIR and New Revenue Canada AIR - NOT TO BE CONFUSED

Administrators should take note that Revenue Canada has a new form for all registered pension plans (RPPs) called the "Annual Information Return". Care should be taken to correctly process and mail these AIRs to Revenue Canada and not to the PCO.

Revenue Canada AIRs should be directed to:

Revenue Canada Taxation
Registered Pension Plans Division
400 Cumberland Street
5th Floor
Ottawa, Ontario
K1A 0L8

The English enquiries number is (613) 954-0419
The French enquiries number is (613) 954-0930

Administrators should also take care to forward the completed AIR required under provincial pension legislation in the blue return envelope to the PCO by the filing deadline.

Conflicts of Interest and Code of Ethics in SIP&G's

A NUMBER OF pension plan Administrators have stated in their Statement of Investment Policies and Goals (SIP&G) - in the section dealing with policies and procedures concerning conflict of interest - that the Code of Ethics and Standards of Professional Conduct of the Association for Investment Management and Research (AIMR) shall apply to investment managers acting as their agents.

Chartered financial analysts (CFAs) and other members of the AIMR are subject to this Code. The PCO expects that more Administrators will choose to adopt it because there are many elements of the Code which can be applicable to them, their employees and agents.

One of the standards of professional conduct stipulates that all CFAs and other members of AIMR who are involved with the investments of a pension fund should deliver a copy of the Code and Standards to their employer. It is the view of the PCO that current conditions dictate that this employer/employee relationship extends to that of agent/Administrator and Administrator/sponsor, or any other pertinent relationship in the investment management of the pension fund, whether in-house or through the use of external advisers.

Accordingly, investment managers who are

governed by this Code, but to whom no reference is made in the SIP&G of their pension fund clients, should inform their clients of their obligation to comply with the Code and Standards. They should also deliver a copy of the Code and Standards to these clients.

CICA Approves Guideline for Annual Audited Financial Statements

THE AUDITING Standards Board of the CICA has recently approved a CICA Handbook Auditing and Related Services Guideline "Auditor's Report on Pension Fund Financial Statements Filed with a Regulator". Pension fund financial statements exclude the pension plan benefit obligation. The Guideline does not apply if the Administrator of the pension plan intends a general distribution of the financial statements to pension plan members.

The Guideline is expected to be released this March and should reduce the concerns being experienced by auditors and Administrators about the basis of accounting for such pension fund financial statements. It states that, in the Auditing Standards Board's opinion, a basis of accounting other than generally accepted accounting principles as set out in Section 4100 is appropriate for pension fund financial statements of a defined benefit pension plan prepared for the purpose of filing with a regulator pursuant to governing statute or regulations. Accordingly, the Board believes the auditor should express an opinion whether such statements are in accordance with an appropriate disclosed basis of accounting.

The basis of accounting will be described on the notes to the financial statements. The PCO takes the position that the notes to the statements should state that the financial statements have been prepared for regulatory purposes only and are not general purpose financial statements. The notes should also state that there is no disclosure of the pension benefit obligation, but in all other respects, the financial statements are prepared in accordance with generally accepted accounting principles.

For a more detailed discussion of the background of the "fund" versus "plan" issue and the PCO's position, please refer to the PCO Bulletin dated July, 1991, Volume 2, Issue 2.

The PCO appreciates the co-operation of the CICA and the auditing firms on this and related issues.

The Impact of Technology on the Regulatory Process

An Interview With Lawrence Contant, Senior Manager, Defined Benefit Plans

In recent years, the PCO has been talking a good deal about the advent of technology. When will the industry (those who file) be able to see some results?

One major development occurred this past year that feeds into the technology stream. A regulation change to the PBA, 1987 this past summer provided for a simplified Annual Information Return (AIR) [inserted in the last issue of the *PCO Bulletin*]. It was mailed to all Administrators responsible for pension plans with July 31 year end dates. For these plans, tombstone information on the new AIR was manually prepared. In future, they will be computer-generated based on data received on previous AIRs.

Two new systems, AIR and CPD, will be introduced and on-line by mid February. The benefits of the new AIR system that supports AIR and document processing are 1) the backlog responsible for processing delays is expected to be substantially drawn down by the end of 1992 and 2) clients who comply will notice marked improvement in the speed of document processing. This means that acknowledgement, acceptance and approval of returns and reports will be more timely. As the regulatory process is streamlined, the benefits become apparent: regulatory delays should lessen.

The Central Plans Data Base System (CPD), which supports the AIR system, will be implemented for enhanced data capture and retrieval purposes. The data is derived from various sources namely, applications for registration, actuarial cost certificates, and Schedules A and C from the AIR. The CPD system will be used for many purposes but mainly, for updating plan information.

Implementation of the two systems will enable staff to sift more quickly through reports and returns to determine filings that comply from those that do not. The report summarizing plans in non-compliance will result in faster follow-up contacts with Administrators. However, the idea in the first instance is for Administrators to file reports completely, accurately and signed by the named Administrator. If the certification is not completed, the return or report will be rejected by our system.

A reminder to Administrators about the new AIR:

- the basic information contained in sections 1 to 4 **will not have to be completed unless** the information has changed from the last submission; and
- sections 5 to 10 inclusive **must be completed** by the Administrator.

It is our understanding that the PCO decided to have the system implemented by staff rather than by outside consultants? Were costs a factor? Are there special advantages to this approach?

The main advantage to using front line staff - the end users of the system - is based on their ability to see the purpose of the system in terms of the legislation, client needs and the regulatory process and their subtleties. Clearly, staff are best able to identify the advantages and disadvantages or, what works and what doesn't.

Yes, cost was one factor. But when we completed our analysis, we were confident with this approach. It was backed-up by a belief that we had within the PCO the technical know-how, talent, skills, experience and dedication of people who really understand the complexities and nuances of pension legislation and the regulatory review process.

The benefits of this approach are demonstrable. Through the testing phase staff spotted numerous problems and glitches. System adjustments were made that otherwise left unchecked would have undermined service to our clients. Accordingly, we believe confidence in the approach has been well placed. We expect client confidence to improve.

Which management areas have been involved through the planning and design stages and what are management's objectives?

All levels of management were involved in systems planning, design and development. For the basic systems architecture we worked with an outside consultant. Overseeing the implementation stage is the Implementation Management Committee, comprised of managers and staff with special skills. Actual implementation is being directed by the Project Manager from the Information Systems Services Group (ISSG - the PCO's in-house computer support services group) who, with the help of key staff, has been able to identify and rectify problems with the system.

One of the primary objectives all along has been to develop a system with such obvious benefits that staff could and would use it enthusi-

astically. Another main objective was to ensure that the system would have a reasonable life span - probably five years or more - plus be capable of adapting to new and changing requirements.

What stage is the project at now?

We are nearing completion and expect the CPD and AIR systems to be on-line in mid February. At this time the system will run live, after having been thoroughly tested. Enhancements, identified in testing, will be scheduled for later phases.

Will this mean that the text of a pension plan will appear on Pension Officers' computer screens?

It will not be possible for Pension Officers to call up a pension plan text on the screen. We have looked into that technology, but the cost of incorporating it is extremely high and the pay-off cannot be substantiated at this time. We have decided to let the pace of technological change and demand for such information dictate our course of action in this regard. Pension Officers will be able to access vital and sufficient information through the CPD and AIR systems (derived from certain filing documents) on which to base judgments in relation to compliance issues.

Does this mean the AIR can be filed electronically? What about other filing documents? If not, will such transmission capabilities be available in the future?

No, we are not at the stage where an AIR can be filed electronically. It is still necessary for the Administrator to certify the accuracy of the information contained in the return and to sign the document. At this time, we do not have the technology that would allow for the transmission of a signature through a medium compatible with our system.

Do PCO staff presently have sufficient experience and literacy with computers? What further training is required?

Most staff have considerable experience and literacy with computers. The typical work station has a personal computer linked to the local area network (LAN) that provides access to electronic mail, word processing, spreadsheets, schedulers, calculators and work in process programs. We also maintain a small fleet of portable PCs that may be used at home. These units also allow access to the host computer through modems.

The ISSG staff are supportive of all staff and regularly provide training at various levels and as required. Staff work habits have been transformed over the past two years and most produce their own correspondence for faster client service.

You say the PCO has a LAN - can you briefly

describe how these various systems relate?

A local area network or LAN may be thought of as a number of personal computers connected together and linked to a master computer (an IBM AS/400 minicomputer) that houses and runs the high volume CPD and AIR systems.

Some PC-based applications are run on a server allowing several users to share data and programs including ASRS (Administrator's status reporting system), PFTS (pension file tracking system), and PENTRACS (pension tracking system). PCO systems have been carefully designed to provide everyone with access to the appropriate programs applicable to their work.

Enhanced document processing effectively provides an early warning mechanism detecting plans that appear to be in trouble or in contravention of the legislation.

We hope that a year from now clients will notice marked improvement in document processing with our backlog greatly reduced. Those in compliance will be happy to learn that in time, technology will assist in expediting approval of filings; those in non-compliance can expect to hear from us sooner.

How You Can Get Assistance from the PCO

An article in the first issue of the PCO Bulletin two years ago discussed some points to keep in mind when making enquiries. Staff are again being asked to provide legal opinions, and are often asked to provide answers on purely speculative questions. The increasing volume and complexity of enquiries makes it impossible for us to provide answers to "what if" questions. If you have a real client with a real problem we are pleased to deal with it. We are reiterating the points made in that first article because they are still applicable.

Administrators, their agents, and consultants pose questions daily to staff of the PCO either orally or by letter. Although staff do make efforts to provide service and assistance on a timely basis they are frequently hampered because of incomplete information from the client. Please keep the following points in mind when preparing your questions.

Your enquiry will be answered by phone, if possible; but you may be asked to put it in writing.

An enquiry may appear to be straightforward; but

it could be complex or raise other issues with related serious implications. In addition, staff of the PCO are required to deal with enquiries responsibly for the protection of all parties. For these reasons, you may be asked to make your enquiry in writing.

We will expect you to formulate the issue as clearly as possible so the enquiry can be processed. If the following points have not been addressed or considered, the PCO may have no alternative but to return the enquiry to you unanswered for lack of sufficient and pertinent information.

Please follow these steps to ensure expedited treatment of your enquiry:

- provide a brief background note;
- explain the business purpose of your proposed action;
- separate the legal issues from the policy issues;
- analyze the issues;
- state your own opinion and support it; and
- reference the relevant sections of the PBA and Regulation.

Unless you state your client's objective, we cannot give any direction. Unless you explain the context or business purpose of the proposed action, we cannot respond to the practical realities of your question.

It is important to distinguish the legal issues. We are **not** able to provide legal advice; that is the responsibility of your solicitor. The issues we can and will deal with and offer direction on are administrative and policy issues. Please provide us with your assessment of the situation; tell us what you think and why. It is helpful to our understanding if you express your view of any broader policy implications that the issue may raise. Your suggested direction or answer may well be correct.

Remember our mandate and objectives.

The mandate of the PCO is to administer the PBA and regulations and promote the establishment, extension and improvement of employer-sponsored pension plans. Within that framework, our objectives are to:

- protect the solvency of plans;
- ensure even-handed treatment of employees' pension rights;
- promote retirement planning and expand pension coverage; and
- encourage timely disclosure to plan members.

Staff of the PCO will provide you with the best service possible. The quality of the service and the timeliness of the response depends largely on the quality and thoughtfulness of your submission.

Please direct your policy enquiries to Susan Ellis or Cynthia James, Research Analysts, Secretariat.

Administrative Practices

Extension of contribution deadlines in active defined benefit plans

Section 105 of the PBA, R.S.O. 1990 (formerly section 106, PBA, 1987) will not be used to permit funding deadlines for defined benefit pension plans to be extended.

Change of carrier of plan assets

There is a significant difference between a transfer of assets between fiduciaries when only one plan is involved, and a transfer of assets between two pension plans. An administrative practice published in the February, 1990 *PCO Bulletin* dealt with the change of carrier of plan assets. Increasingly, however, this administrative practice is being used for transactions involving transfers of assets between plans — transactions which require the prior approval of the Superintendent under sections 79, 80 and 81 of the PBA, R.S.O. 1990. The difference between a **change of carrier** and a **transfer of assets** is clarified below.

Where the asset transfer involves **one** pension plan, the transfer is a **change of carriers**. This change can be achieved by sending the PCO an explanatory letter and a copy of the document which instructs the institution (from which the funds are being transferred) to transfer the funds. When the carrier is named as part of the plan text, an amendment to the plan is required.

Where the asset transfer involves **two or more** pension plans, and assets are being transferred across plans, the transfer is a **transfer of assets**. This requires the Superintendent's approval prior to the transfer. Such transfers would include purchase/sale, merger of plans, adoption of a new plan or plan conversion.

Your Questions Answered

Q. What is the YMPE (Year's Maximum Pensionable Earnings) for 1992?

A. The YMPE for 1992 is \$32,200.

Q. Is it possible to pay immediate pensions

during a wind up to those members eligible to receive them?

- A. Yes. The Administrator can make an application to the Superintendent for approval of monthly payments from the pension fund for those members eligible to receive them. These payments are approved by the Superintendent on a priority basis. This will ensure that the pension payments to those eligible to retire can commence while the wind-up approval process is taking place.

Q. Can the annual assessment for the PBGF be paid from the pension fund as an administrative expense? What happens if the employer is insolvent and the PBGF assessment is outstanding?

- A. No. Section 33 of the Regulation specifically states that the employer shall pay the PBGF assessment; it is not an administrative expense. In the event of an insolvency the outstanding PBGF assessment would constitute a claim against the employer company.

Q. Is it imprudent for a pension fund to take the position that it will make only "ethical" investments?

- A. No. "Ethical" investing is permitted, but the SIP&G must state this position and set out the criteria for investments. The members of the plan should be notified of this position.

Q. Does the PCO have a policy or regulations concerning the use of derivative securities in pension funds?

- A. This question was first dealt with in the September 1990 (Volume 1, Issue 3, page 13) issue of the *Bulletin*. Derivative investments may be used in pension funds. As with all investment matters, the principle of prudence applies, to be determined on the basis of the overall portfolio. The intended use of derivatives must be disclosed in the SIP&G, as well as the strategies that will be pursued with these investment instruments. The disclosure of derivative securities is also required in the annual financial statements to be filed with the PCO.

Q. Do members need to be given an option on conversion of a pension plan?

- A. Yes. All members must be given the option of converting their past benefits to a defined contribution form or leaving them as defined benefits.

Q. What piece of legislation governs the requirement to continue pension contributions for members during pregnancy and parental leave?

- A. The Employment Standards Amendment Act, 1990, administered by the Ministry of Labour,

governs the requirement to continue pension contributions during pregnancy and parental leave. The following questions and answers are based on information provided by the Employment Standards Branch.

Q. If an employee elects to continue contributions during pregnancy and parental leave, how are these contributions remitted and when?

- A. The method of payment of employee contributions is provided for by the individual pension plan. This could include periodic payments during the leave, a lump sum payment after the leave, periodic payments after the leave or some other arrangement which the plan sponsor wishes to implement.

Q. In a contributory pension plan members must elect, in writing, whether to continue or cease their contributions. What are the plan sponsor's obligations in this regard?

- A. The plan sponsor should provide sufficient information for employees to make an informed election. This information might include scenarios under either choice which clearly illustrate the possible results of the election. The employer should also provide information on the method of payment of contributions.

Q. Can the plan sponsor agree to make employer contributions conditional on the employee returning after the leave?

- A. No. The continuation of employer contributions is an unconditional right.

Tribunal Activities

This section summarizes all matters related to the Pension Commission of Ontario.

Commission Meeting Dates, 1992

The Pension Commission will convene on the following Thursdays in 1992: March 26, April 23, May 21, June 25, July 23, August 27, September 24, October 22, November 26, December 17.

PCO Board Members

The following individuals comprise the nine-member tribunal:

Joseph Regan, Chairman
Eileen Gillese, Vice Chair
Darcie Beggs
David Brown
Donald Collins

Deborah Hanscom
Robert Nickerson
Glenn Pattinson
Monica Townson

Hearings Before the Commission

General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published in the March 1991, Vol.2, Issue 1 edition of the Bulletin. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, August 19, 20, October 23 - 25, 1991, January 21, 1992. The hearing has been adjourned to May 20, 1992.

Commission Decisions

Applications Approved Since September, 1991

Applications Approved Under Clause 7a(2)(c) of the Regulation and Subsection 79(1) of the PBA, 1987 - Request for Return of Surplus Pursuant to a Court Order

At the Commission meeting held September 19, 1991, the Commission consented to filing with the court a consent pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(c) of the Regulation to the payment of plan surplus.

a) B.F. Goodrich Canada Inc. Salaried Pension Plan (C-5543)

Payment of surplus from the pension fund of the B.F. Goodrich Canada Inc. Salaried Pension Plan (C-5543) (the "Pension Plan") in the amount of \$28,310,326 as at June 30, 1991 plus earnings thereon to the date of payment (the "employer's surplus") provided that this consent shall not be effective until:

- (1) the administrator of the Pension Plan provides the Superintendent of Pensions with written confirmation that all benefits and other payments, including enhancements, to which members, former members and any other persons are entitled on the termination of the Pension Plan pursuant to,
 - (a) the Pension Plan,
 - (b) the minutes of settlement made between B.F. Goodrich Canada Inc. and M. Tompkins, G. Argay Jr., J.R. Deschesnes, G. Rourke, B. Ten Brink, and J. Culp dated June 13, 1991, and
 - (c) the orders of the Honourable Mr. Justice Gibson dated June 13, 1991 and September 5, 1991,have been purchased or otherwise funded;

- (2) the Superintendent has approved, in consultation with the other affected jurisdictions, the allocation of the employer's surplus attributable to members, former members and any other persons entitled to payments under the Pension Plan amongst the affected jurisdictions; and,
- (3) the Superintendent has received written confirmation from the administrator of the Pension Plan that the employer's surplus attributable to members, former members and any other persons entitled to payments under the Pension Plan in each jurisdiction will be paid out subject to the laws of that jurisdiction.

The Commission also authorizes the filing of this Consent with the court pursuant to clause 7a(2)(c) of Ontario Regulation 708/87 (as amended) under the Act.

At the Commission meeting held November 21, 1991, the Commission consented to filing with the court a consent pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(c) of the Regulation to the payment of plan surplus.

a) Prestolite Wire Salaried Employees Pension Plan (C-100922)

Payment of surplus to Prestolite Wire Canada Inc. from the Prestolite Wire Salaried Employees Pension Plan in the amount of \$2,993,401 as at January 17, 1991 plus earnings thereon to the date of payment.

At the Commission meeting held December 19, 1991, the Commission consented to filing with the court a consent pursuant to subsection 79(1) of the PBA, 1987 and subsection 7a(2) of Ontario Regulation 743/91 to the payment of plan surplus.

a) Retirement Plan for the Employees of Linread Canada Limited (C-15364)

Payment of surplus to **Accurate Threaded Fasteners Inc.** from the Retirement Plan for the Employees of Linread Canada Limited in the amount of \$37,000 as at August 28, 1991 plus investment earnings to the date of payment.

Applications Approved Under Clause 7a(2)(b) of the Regulation and Subsection 79(1) of the PBA, 1987 - Surplus Withdrawal on Wind Up

At the Commission meeting held September 19, 1991, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the payment of plan surplus.

a) Tri-Way Machine Ltd. Employees' Pension Plan (C-15335)

Payment of plan surplus amounting to \$398,383 as at December 31, 1989 plus investment earnings to the date of payment.

b) Synergistics Industries Limited Pension Plan (sole member plan) (C-101132)

Payment of plan surplus amounting to \$66,041 as at December 31, 1990 plus investment earnings to the date of payment.

At the Commission meeting held November 21, 1991, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of the Regulation to the payment of plan surplus.

a) Cogan Corporation Employees' Pension Plan (C-101915)

Payment of surplus to Cogan Corporation from the Cogan Corporation Employees' Pension Plan in the amount of \$153,365 as at December 31, 1988 plus investment earnings to the date of payment provided that this consent shall not be effective until the Superintendent of Pensions confirms that he has received from the administrator of the Pension Plan written confirmation that all benefits and other payments to which members, former members and any other persons are entitled on the termination of the Pension Plan in accordance with the wind-up report approved by the Superintendent have been purchased or otherwise funded.

At the Commission meeting held December 19, 1991, the Commission consented pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(1)(b) of Ontario Regulation 743/91 to payment of plan surplus.

a) Pension Plan for Designated Employees of Design Team Incorporated (C-100337)

Payment of surplus to Design Team Incorporated from the Pension Plan for Designated Employees of Design Team Incorporated in the amount of \$23,717 as at December 31, 1989 plus investment earnings to the date of payment.

Applications Approved under Subsection 64(8) of the PBA, 1987 - Requests for Return of Member Contributions

At the Commission meeting held September 19, 1991, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

a) The Gemini Group Limited Partnership and its General Partner, The Gemini Group, Automated Distribution Systems Inc. - Pension Plan for Employees who transferred from Air Canada (C-102743)

Refund from the Gemini Group Limited Part-

nership and its General Partner, The Gemini Group Pension Plan for Employees who Transferred from Air Canada (Registration Number C-02743) of member contributions amounting to \$1,173.25 as at November 1, 1990, plus interest to date of payment, on the grounds that this amount was incorrectly paid into the fund out of the overtime earnings of two plan members.

b) The Steelworkers Members' Pension Benefit Plan (formerly the GSW Inc. Negotiated Pension Plan (C-8874))

Refund from The Steelworkers Members' Pension Benefit Plan (Registration Number C-8874) to plan members who in August, 1990 remitted contributions to the fund in error, on the grounds that a total amount of \$4,227.30 as at September 1, 1990, plus interest to date of payment, was incorrectly paid into the fund out of the earnings of the plan members.

At the Commission meeting held December 19, 1991, the Commission consented pursuant to subsection 64(8) of the PBA, 1987 to the refund of member required contributions.

a) Consolidated Retirement Income Plan for Canadian Employees of Akzo America Inc. (C-14670)

Refund of member contributions (11 members) in the aggregate amount of \$58,002.28 as at December 31, 1990 plus investment earnings to date, which consent shall be effective once the employer deposits into the pension plan fund an amount equal to the total sum to be refunded.

Application under Subsection 79(4) of the PBA, 1987 - Request for Return of Employer Payments or Overpayments

At the Commission meeting held October 17, 1991, the Commission consented pursuant to subsection 79(4) of the PBA, 1987 to the refund of overpayments.

a) Retirement Income Plan for Salaried Employees of Somerville Packaging, A Division of Paperboard Industries Corporation (C-15270)

Refund of overpayment of \$294,425.82 to the employer.

Pension Benefits Guarantee Fund ("PBGF") Declaration and Allocation

Employees' Pension Plan for Employees of the New Harding Group Inc. (C-2397)

On November 21, 1991, the Commission, pursuant to subsection 91(1) of the PBA, 1987, issued a Notice of Proposal to Make a Declaration pursuant

to section 84 of the PBA, 1987 that the PBGF apply to the pension plan.

On December 23, 1991, the Commission issued a Declaration pursuant to sections 84 and 91 of the PBA, 1987 that the PBGF applies to the pension plan.

On December 23, 1991, the Commission, pursuant to subsection 30(3) of the Regulation, allocated from the PBGF, to be paid to the administrator of the pension plan, \$490,000 plus interest at the rate of 11.5% calculated from October 30, 1990 to the date of payment for the provision of benefits determined under subsection 30(1) of the Regulation for the pension plan.

Superintendent's Decisions

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 90(5) of the PBA, 1987, [Notice of Proposed Wind-up Order], issued a Notice of Proposal to Make an Order pursuant to section 70 of the PBA, 1987 dated October 30, 1991 for the following pension plans:

- a) **Deilcraft Furniture Co. Ltd. Pension Plan for Hourly Employees** - Local Union 2345 of the International Brotherhood of Electrical Workers and Local Union 101 of the Canadian Union of Operating Engineers (C-102334).
- b) **Deilcraft Furniture Co. Ltd. Pension Plan for Hourly Employees (Milverton Plant)** - Local Union 2-235 of the International Woodworkers of America (C-102335).
- c) **Deilcraft Furniture Co. Ltd. and Partici-**

pating Employers' Pension Plan for Salaried Employees (C-102349).

The Superintendent, pursuant to subsection 90(5) of the PBA, 1987, [Notice of Proposed Wind-up Order] issued a Notice of Proposal to Make an Order pursuant to section 70 of the PBA, 1987 dated December 10, 1991 for the following pension plan:

Pension Plan for the Salaried Employees of Warren K. Cook Limited (C-2928).

Orders

The Superintendent issued an Order pursuant to section 70 of the PBA, 1987 [Wind-up Order] dated December 10, 1991 for the following pension plans:

- a) **Deilcraft Furniture Co. Ltd. Pension Plan for Hourly Employees** - Local Union 2345 of the International Brotherhood of Electrical Workers and Local Union 101 of the Canadian Union of Operating Engineers (C-102334).
- b) **Deilcraft Furniture Co. Ltd. Pension Plan for Hourly Employees (Milverton Plant)** - Local Union 2-235 of the International Woodworkers of America (C-102335).
- c) **Deilcraft Furniture Co. Ltd. and Participating Employers' Pension Plan for Salaried Employees (C-102349).**

The Superintendent issued an Order pursuant to section 70 of the PBA, 1987 [Wind-up Order] dated December 31, 1991 for the following pension plan:

Pension Plan for the Employees of Canada Decal Inc. (C-19796)

Table of Concordance

The table indicates the relationship between the sections of the PBA, 1987 and the PBA, R.S.O. 1990.

Former Legislation			Consolidation			Former Legislation			Consolidation		
Chap.	Section		Chap.	Section	Disposal	Chap.	Section		Chap.	Section	Disposal
35	1-18		P.8	1-18		35	80(3)		P.8		Om
	19				NC		80(4,5)			79(3,4)	
	20-47			19-46			80(6)				Om
	48(1)			47			80(7-10)			79(5-8)	
	48(2)				NC		81-116			80-115	
	49-79			48-78			117-119				Om
	80(1,2)			79(1,2)							

Abbreviations

Not consolidated (Not consolidated and not repealed)

NC

Omitted or repealed by Revision (Spent)

Om

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- Plan records - how long to keep?	March/91	2/1	14
- Policy Statement 2 (purchase & sale) - does it apply to corporate reorganization?	November/91	2/3	15
- Pregnancy & parental leave - conditional contributions	February/92	2/4	11
- Pregnancy & parental leave - continuation of contributions	February/92	2/4	11
- Pregnancy & parental leave - plan sponsor's obligations	February/92	2/4	11
- Pregnancy & parental leave - whose legislation?	February/92	2/4	11
- Province of registration - when to change?	November/91	2/3	15
- Purchase and sale agreement - prior to 1/1/88	May/90	1/2	13
- Reciprocal agreement	December/90	1/4	10
- Refund of employee contributions	July/91	2/2	11
- Regulatory and Superintendent's forms - difference	March/91	2/1	12
- Suspension of membership - is it permitted?	February/90	1/1	6
- Time limits - termination statements	May/90	1/2	14
- Transfer option - commuted value	December/90	1/4	11
- Unlocking funds - leaving the country	March/91	2/1	13
- Void and adverse amendments - difference	March/91	2/1	13
- Year's Maximum Pensionable Earnings - what is it?	December/90	1/4	11
- Year's Maximum Pensionable Earnings - 1992 figure	February/92	2/4	10

Commission Decisions

- Cluett Peabody	July/91	2/2	15
- CUPE, Ontario Nurses Association, OPSEU and SEIU versus Ontario Hospital Association	November/91	2/3	16
- General Motors of Canada (decision under section 88 of the PBA, 1987)	March/91	2/1	17
- Hospitals of Ontario Pension Plan (decision under section 8(1)(e) of the PBA, 1987)	December/90	1/4	12
- Otis Canada Inc., pension plan for Draftsmen Local 164 (decision under subsection 82(1) of the PBA, 1987)	February/90	1/1	16
- Otis Canada Inc., pension plan for Steel Workers Local 7062 (decision under subsections 79(1) and 80(4) of the PBA, 1987 and clause 7a(2)(c) of the Regulation)	February/90	1/1	11

Other Decisions

- Freedom of Information Appeal #880334, Order 125	February/90	1/1	18
- Commission's and Superintendent's Decisions, Notices of Proposal to Make Orders, Orders, PBGF Declarations	May/90	1/2	18
- Commission's and Superintendent's Decisions, Notices of Proposal to Make Orders, Orders	September/90	1/3	18
- Commission's and Superintendent's Decisions, Notices of Proposal to Make Orders, Orders	December/90	1/4	16
- Commission's and Superintendent's Decisions, Notices of Proposal to Make Orders, Orders	March/91	2/1	22
- Tribunal activities: Commission meeting dates, requests for hearings, Commission's and Superintendent's decision, Notices of Proposal to Make Orders, Orders	July/91	2/2	14
- Tribunal activities: Commission meeting dates, requests for hearings, Commission's and Superintendent's decision, Notices of Proposal to Make Orders, Orders	November/91	2/3	15
- Tribunal activities: Commission meeting dates, requests for hearings, Commission's and Superintendent's decision, Notices of Proposal to Make Orders, Orders	February/92	2/4	11

Appointment of Administrators

- Administrators appointed - 01/06/88 - 04/25/90	May/90	1/2	17
- Administrators appointed - 05/03/90 - 06/22/90	September/90	1/3	17
- Administrators appointed - 01/05/90 - 09/13/90	December/90	1/4	17
- Administrators appointed - 02/28/91 - 02/28/91	March/91	2/1	22
- Administrators appointed - 04/04/91 - 05/08/91	July/91	2/2	26

Forms

- Annual Information Return, Instructions and Schedules	November/91	2/3	centre
- English and French versions of Spousal Waiver of Pre-Retirement Death Benefit and Spousal Waiver of Joint and Survivor Pensions	September/90	1/3	centre
- French version of Spousal Waiver of Pre-Retirement Death Benefit	February/90	1/1	19

Actuarial Position Available

ACTUARY - \$66,900 - \$84,100

THE PENSION COMMISSION OF ONTARIO has an opening for an actuary to assist the Director of Actuarial Services. In this role you will be responsible for reviewing actuarial valuations, establishing guidelines and performing research. As well, you will participate in policy development, resolve problems related to specific pension plans and liaise between the PCO and the pension industry. Location: Toronto

Qualifications: Fellow of the Canadian Institute of Actuaries; knowledge of the Pension Benefits Act and related federal / provincial legislation; thorough understanding of pension plan valuation; experience in the pension industry; ability to provide policy advice to senior management; sound knowledge of computers; good analytical, communication, interpersonal and management skills, initiative and highly developed judgement. Less qualified candidates will be considered for a position with a lower classification.

Applications or resumes must be received by March 20, 1992. Quote file FI-8/92 and send to the Human Resources Branch, Ministry of Financial Institutions, 10 Wellesley Street East, 7th Floor, Toronto, Ontario, M7A 2J6.

Contacts for Policy Areas and Enquiries

Actuarial	Teck Go	972-5799
Annual Information Returns	Rose Ann Drakes	972-5782
Communications	Judith Chalmers	972-5800
Freedom of Information Requests	Ken Doiron	972-5798
General Enquiry - Secretariat	Lynn Barron	972-5825
Policy Issues	Cynthia James	972-5826
	Susan Ellis	972-5001
Mailing List	Lynn Barron	972-5825
PCO Bulletin/Compliance Assistance Guidelines	Judith Chalmers	972-5800
Pension Benefits Guarantee Fund (Administration)	Margaret Fennell	972-5785
Plan Registration-Forms		972-5784
Registrar/Secretary to the Commission	Mary Crocker	972-5815
Statements of Investment Policies & Goals/Investment Policy Returns	Jules Huot	972-5821

Contacts for Plan-specific Enquiries

Plan-specific enquiries and submissions should be directed to Pension Officers, Pension Plans Branch:

Type of Plan or Submission	Alpha Range	Pension Officer	
<u>On-going Defined Benefit Plans</u> (also includes partial wind ups, sales, mergers and conversions)	A-D E-M N-R S-Z	Jaan Pringi George Bahrynowski Rosemine Jiwa-Jutha Mark Henry	972-5761 972-5817 972-5816 972-5777
<u>On-going Defined Contribution Plans</u> (also includes partial wind ups, sales, mergers and conversions)	A-J K-Z	Daphne Ludgate Elizabeth Carter	972-5770 972-5774
<u>Multi-employer Plans</u>	All	Bill Qualtrough	972-5762
Restated Plan Documents	All	George Bahrynowski	972-5817
Full Wind Ups	All	Stanley Chan	972-5016
Surplus Applications	All	Robin Gray	972-5775
Insolvencies	All	David Gordon	972-5824

Are You On Our Mailing List?

Owing to mailing and production costs the PCO anticipates **not** sending future Bulletins and Compliance Assistance Guidelines to our mailing list of registered pension plans indefinitely (you are on this list if the mailing label shows your plan's provincial registration number).

If you would like to be on our supplementary mailing list to continue to receive the PCO Bulletin and Compliance Assistance Guidelines please write, or fax Catherine Helwig at 963-9585 or call directly at 972-5802.

The PCO Bulletin is published by the Pension Commission of Ontario, 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2 (416) 963-0522 fax (416) 963-9585

Although every effort has been made to ensure the accuracy of the material contained in this publication, it is provided for information purposes only. Acts and regulations mentioned in this publication may be reviewed in most public libraries or obtained through Publications Services, Ministry of Government Services, 880 Bay Street, Toronto, Ontario M7A 1N8

THE PENSION COMMISSION OF ONTARIO BULLETIN

June, 1992

Vol. 3, Issue 1



Focus on Client Service

ON MAY 4, 1992, the re-organization of the Pension Commission was formally announced. We are indebted to those within the industry who provided advice that helped in planning this event. The objective of the reorganization is to improve the quality of our service to the pension community.

Concerns expressed by those in the industry generally focused on the following areas:

- inconsistent advice provided by staff;
- slow response times to requests for information or in obtaining approvals;
- multiplicity of staff who are involved in dealing with a single file; and,
- the multiple requests for additional information that are sometimes made with respect to a particular case.

Our approach to the re-organization has been guided by the following imperatives:

- accountability;
- consistency in applying policies and providing advice;
- increased training and development of Commission staff; and,
- streamlining operational procedures.

Client Applications:

Resources have been reallocated in response to client needs. In future, each Pension Officer or Analyst will be assigned, on average, fewer than three hundred case files, as opposed to more than six hundred prior to the re-organization. This should significantly improve response times and help to eliminate the existing case back-log.

HIGHLIGHTS

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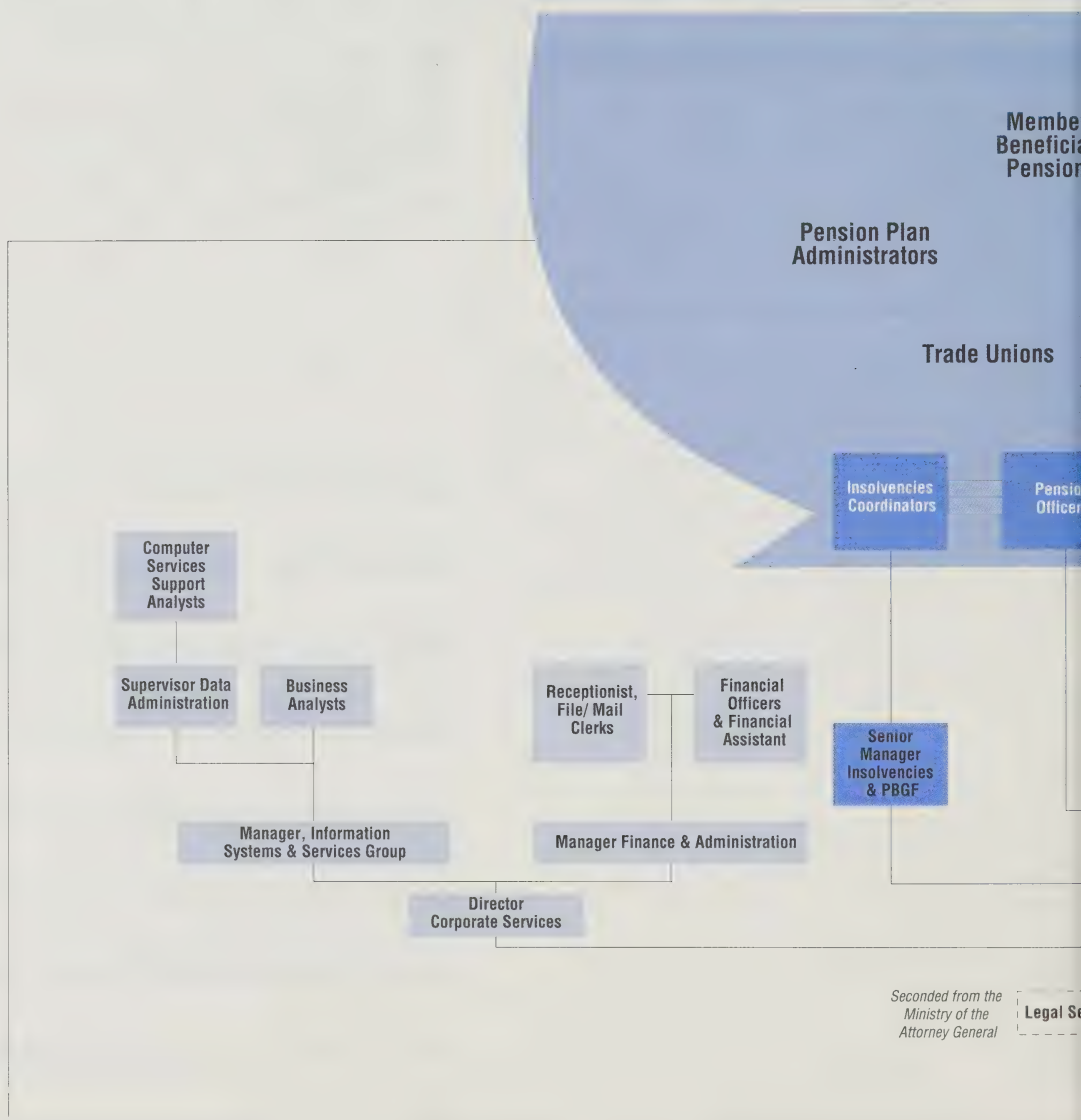
Your Questions Answered

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Tribunal Activities

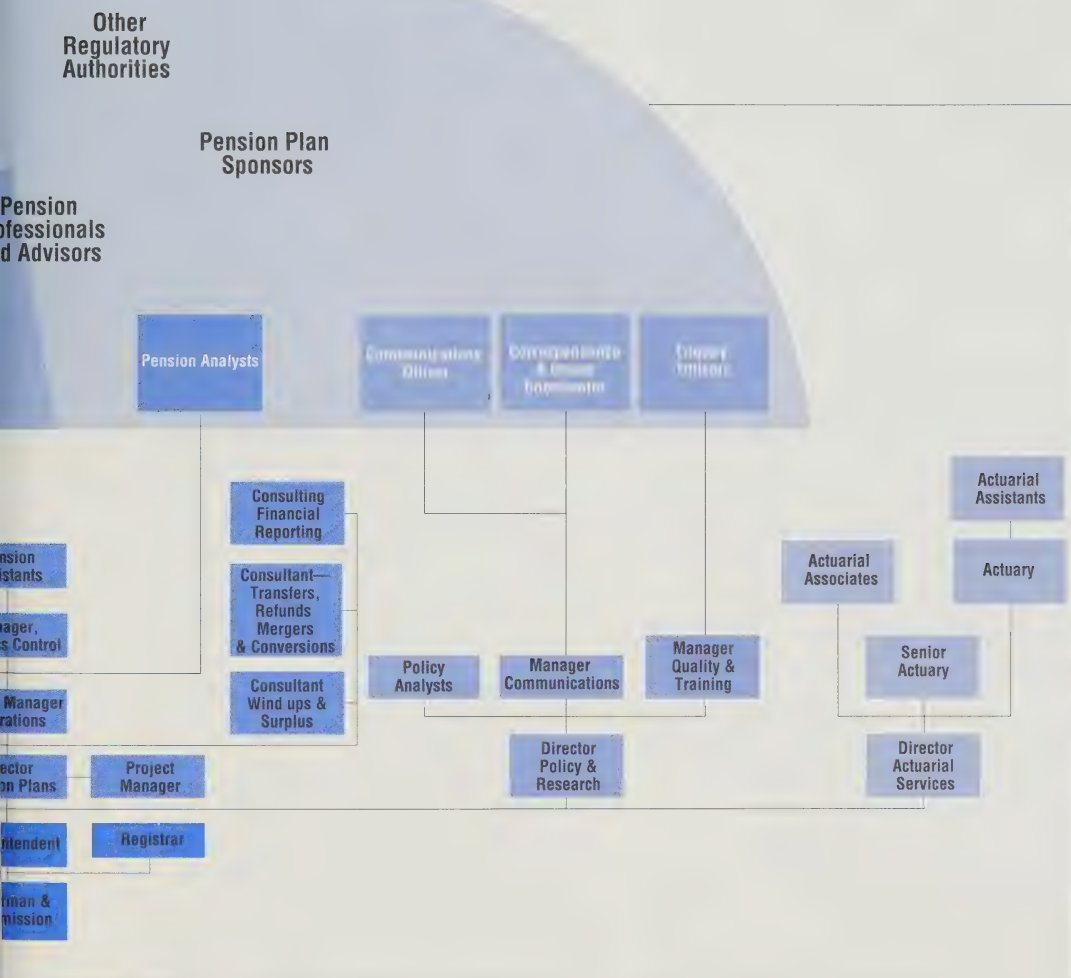
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Pension Commission of Ontario Organization Chart, May 1992



Seconded from the
Ministry of the
Attorney General

Legal Services



Accountability:

The organization has been flattened by removing extraneous layers of management. In future each Pension Officer and Analyst will be totally accountable for the expeditious handling of applications.

Response times:

A new case tracking system is in place to ensure performance targets are met.

Technical Support:

Specialist or Consultant positions now exist to advise and support the Pension Officers and Analysts in handling applications and to ensure that clear policies exist to guide front line staff in their dealings with clients.

In addition, a reference manual of approved policies will soon be available to all front line staff reinforcing a consistent approach to the resolution of cases.

Insolvencies and PBGF Unit:

An Insolvencies and PBGF unit has been established in recognition of the specialized nature of this complex and invariably time consuming function.

Enquiries Unit:

An Enquiries Unit will shortly be formed to respond to public and client enquiries, thereby freeing the time of Officers and Analysts to deal with case specific matters.

Quality and Training:

A Manager of Quality and Training is in place to co-ordinate the implementation of various client service and staff training initiatives. Measures are also in place to provide enhanced staff training.

Actuarial Services Branch:

An Actuarial Services Branch has been created to strengthen the Commission's expertise in this area. (See pg. 8 for details)

A LOOK AT THE NEW STRUCTURE

To make the new organizational responsibilities clear, the following descriptions are provided. You are invited to contact appropriate staff if you require assistance.

Pension Officers and Analysts

Pension Officers and Analysts have the primary responsibility for dealing with all matters relating to specific plans. They are the key contacts for the profession when making plan enquiries. On a day to day basis, Officers and Analysts handle all of the functional processes (except insolvencies and PBGF declarations) within their allocation of plans. For

ease of reference, a listing of the plans assigned to individual staff members is shown on the back pages.

Consultants

Under the new arrangement, Consultants have been assigned to provide the Officers and Analysts with technical support and assistance in the following areas: Financial Reporting; Transfers, Refunds, Mergers, Conversions; and, Wind ups and Surplus.

Operations

Reporting to the Director of Pension Plans, the Senior Operations Manager oversees key management functions, monitors the allocation of plans to the Pension Officers and Analysts, and ensures that established service standards are maintained. The Senior Operations Manager also supervises the activities of the Process Control Unit.

The Process Control Unit is responsible for processing routine filings.

Insolvencies and PBGF Unit

The Insolvencies and PBGF Unit operates separately, performing a series of specialized functions relating to the appointment of plan administrators, and the monitoring of the wind up process.

It is the firm view of all Commission staff that these changes will go a long way towards improving client service and reducing the backlog of cases that has existed for the last several years. Staff are most grateful to everyone who provided feed-back and suggestions during the last few months. Naturally, further comments or suggestions would be welcome as this reorganization takes form.

Refer to the back pages for a list of new plan allocations and contacts for those plans at the PCO.

*Canadian Association of
Pension Supervisory
Authorities (CAPSA)
42nd Meeting, Halifax,
February 25—26, 1992*

THE CANADIAN ASSOCIATION OF PENSION SUPERVISORY AUTHORITIES (CAPSA) recently met for its 42nd meeting in Halifax, on February 25 and 26 of this year. Members from all

provinces, except Prince Edward Island, attended the meeting. In addition, representatives of the federal pension regulator (Office of the Superintendent of Financial Institutions of Canada (OSFI), Revenue Canada, Statistics Canada, and Finance Canada regularly participate in CAPSA meetings.

The 42nd meeting featured discussions of the impact of new federal income tax regulations on pension administration, developments in group RRSP's, a proposal for a new reciprocal agreement among pension supervisory authorities, difficulties with allocating assets in multi-jurisdictional plan wind-ups, and an update on Life Income Fund developments.

New Federal Income Tax Regulations

CAPSA members are considering the options for resolving potential conflicts between new federal income tax regulations and pension benefits legislation. Some of the conflicts are described below.

Conflicts with pension legislation can result from the federal requirement that any surplus which exceeds a prescribed limit must be used for a "contribution holiday". Ontario's requirement for segregation of surplus assets attributable to members affected by a partial wind up results in excess surplus remaining in the plan. Ontario also requires that two years of current service cost be retained in the plan when a defined benefit plan is converted to a defined contribution plan. The income tax regulations specifically prohibit employer contributions under a money purchase plan while a surplus exists.

The Income Tax Act limits the amount of money which can be transferred from a defined benefit plan to a money purchase plan or an RRSP to a prescribed amount. The Ontario legislation provides that on termination of employment an employee has the right to transfer the commuted value of his or her pension benefit to an RRSP or another pension plan if the other pension plan permits such a transfer. These commuted values may exceed the maximum amount which may be transferred under the federal legislation.

The Income Tax Act Regulations require a Registered Pension Plan permit benefits under a defined benefit plan to be reduced so as to avoid the revocation of the plan's registration. Such reduction could be necessary, for example, where the plan is discovered to be in violation of the maximum pension rule. The plan documents must also permit a return of contributions to a plan member or employer to avoid revocation of the plan's registration. A return of employer contributions could be required, for example, where em-

ployer contributions in excess of eligible contributions are made to the plan. The federal requirement ensures that where plan benefits or contributions fail to comply with any condition, the situation may be remedied. The Pension Benefits Act does not permit a retroactive reduction in benefits.

Group RRSP's — New Developments

A discussion with respect to whether group RRSPs should be registered as pension plans was held. It appears that some consultants are applying to register group RRSPs with Revenue Canada which are structured in a manner which is similar to defined contribution plans. These RRSPs are accompanied by unregistered side agreements between employer and employees which have the effect of treating the arrangements as pensions. Some plan sponsors hold their contributions and make them annually, usually at the end of February, with a corresponding loss of interest to the members.

Revised Reciprocal Agreement

Currently, the pension benefits legislation of a particular province or territory of Canada applies to members employed in that province or territory. Plans which have employees in various provinces must therefore apply the laws of more than one jurisdiction to the same plan. The existing Reciprocal Agreement among pension regulators, signed in 1968, requires pension regulators to administer the pension laws of other jurisdictions in relation to those plan members employed in such other jurisdictions.

Sponsors of multi-jurisdictional plans face the administrative burden and added expense of applying a patchwork of differing (and sometimes contradictory) legislative requirements to various members of the same plan. As a result, a practice has been established whereby the rules of the jurisdiction of a member's employment are applied to benefit entitlement issues, (e.g. vesting) but the jurisdiction of registration of the plan are applied to administrative issues (such as payment of fees, filing, disclosure, accounting and auditing, etc.)

The practice of distinguishing entitlement issues from administrative issues has helped to reduce the administrative burden on multi-jurisdictional plans. However, the informal agreement has proved to be inadequate in accounting for differing approaches to benefit and surplus entitlement taken by the various provinces.

CAPSA members recently agreed on the desirability of a new Reciprocal Agreement which would apply the law of the jurisdiction where a

pension plan is registered to all members of the plan, including those employed in other jurisdictions, for all aspects of the pension plan.

Multi-Jurisdictional Plan Wind-ups

CAPSA members reviewed the practical difficulties faced by both regulators and sponsors in the wind up of a multi-jurisdictional plan. Under the current rules, the jurisdiction in which the plan is registered must ensure that the assets are divided in accordance with the laws of each jurisdiction.

Life Income Fund Update

The Régie des Rentes du Québec has approved 31 LIF contracts as of January, 1992. A modification is being considered which will slightly alter the timing when LIF payments commence.

In Ontario, the treatment of monies in the LIF in the event of a marriage breakdown remains an outstanding concern.

The members discussed proposed federal changes to the Income Tax Act (Canada) which would allow for a "life RRIF". Such a change might allow for a locked-in life RRIF as an alternative to a LIF, depending on the feasibility of imposing maximum withdrawals in a lifetime vehicle.

CAPSA'S Objectives

Members agreed that CAPSA should continue to serve as a forum for the exchange of new developments for pension regulators. Opportunities for greater uniformity of pension legislation among jurisdictions are also discussed through CAPSA. These meetings provide a forum to discuss the Reciprocal Agreement among pension regulators as well as proposals for an up-dated agreement.

Status of Proposed Auditing and Accounting Regulations and Schedule E to the Annual Information Return

THE BULLETIN of July, 1991, Volume 2, Issue 2, reported that a draft of the proposed changes to the auditing and accounting regulations and Schedule E to the Annual Information Return had been circulated for comment to various interested parties. They included the Ad-

ministrators of large pension plans, labour organizations, insurance companies, trust companies, accountants and actuaries.

The responses received from those who reviewed this draft material have been both thorough and insightful. On the basis of these submissions, it has become apparent that some fundamental changes to these documents are required. Consequently, these draft documents are being withdrawn for further study.

It is important to note that although Schedule E has been temporarily withdrawn, the requirement to file financial statements for the pension fund or plan (Regulation 72(1) of the Pension Benefits Act, R.S.O. 1990) still applies.

This consultation produced some excellent suggestions that will make the final regulations and forms more acceptable to everyone. The contribution of those who took the time to read and comment on the draft material is gratefully acknowledged.

How Pension Legislation Affects Locked-in RRSP Funds

EFFECTIVE APRIL 1, 1987, the pension portability became a major cornerstone of pension reform in Ontario. Since that date, many former plan members who are entitled to receive pensions payable from private plans have transferred locked-in funds to their individual RRSPs. Transfers of locked-in contributions are permitted when financial institutions, the issuers or underwriters of RRSPs, agree to administer the transferred funds and all earned interest in accordance with Ontario pension law. The Pension Benefits Act requires that those funds be locked-in until a member reaches pensionable age at which time the proceeds are used to purchase a life annuity. The Pension Commission receives numerous requests for clarification on how pension legislation continues to affect money held in locked-in RRSPs.

Under Ontario law, the use of the proceeds of locked-in RRSPs (prescribed RRSPs) is restricted to the purchase of a stream of retirement income. Although the holder of the RRSP may purchase an annuity as early as age 55, the purchase may be delayed until Revenue Canada, Taxation requires the collapse of the RRSP - the end of the year in

which the plan holder attains age 71.

Pension legislation provides certain rights to spouses of pension plan members if the member dies prior to retirement and also when the member begins to receive a retirement income. These rights continue to be protected by legislation when locked-in pension monies are transferred to a prescribed RRSP. If the holder of a prescribed RRSP has a spouse at the date the locked-in monies are used to purchase an annuity, the form of annuity chosen must provide a 60% continuation benefit to a surviving spouse on the death of the annuitant. This legislated requirement is imposed unless the annuitant and the spouse have waived the requirement in writing.

It is apparent from the questions being asked that many financial institutions have accepted transfers of locked-in pension monies without being fully aware of the responsibility they were assuming. In some instances, it appears that the obligation to administer locked-in monies in accordance with pension legislation is being disregarded by financial institutions. For example, locked-in monies may be permitted to be transferred to successor RRSPs that are not locked-in and RRSP holders may be allowed to withdraw locked-in funds.

When financial institutions fail to administer locked-in RRSPs as required, they are in contravention of the Pension Benefits Act, RSO, 1990. An individual who is convicted of such an offence under this Act is liable for a fine of up to \$25,000. Where a corporation is found guilty of the offence, an officer, official, director or agent of the corporation who is found liable is also subject to a similar fine. Fines up to \$100,000 also may be imposed on corporations. When financial institutions release locked-in funds and do not enforce the 60% spousal continuation requirement, spouses are denied rights and benefits provided by pension legislation. Spouses may initiate legal proceedings against financial institutions to claim restitution for lost rights and benefits.

Recent enquiries have focused on the release of locked-in RRSP monies to fund the purchase of a home. Funds held in regular locked-in RRSPs may not be withdrawn for this purpose. However, in Ontario, self-administered, locked-in RRSPs are permitted to hold the mortgage of the plan holder as an investment. The mortgage process is strictly overseen by an administrator. In instances where the mortgage payments are in default, the administrator of the mortgage may foreclose. The property can be sold and any

outstanding loan amount must be paid back into the locked-in RRSP.

When the impact of pension legislation is discussed with former plan members, many mistakenly express their understanding that the locking-in requirement expires upon their attainment of normal retirement age. Some people believe the locking-in requirement expires if the transferred funds are redirected to a successor RRSP, or if the funds are transferred to an RRSP issued by a financial institution outside Ontario.

Some former plan members are also under the misconception that interest credited on the transfer amount is not subject to pension legislation and therefore, is available for withdrawal at any time. Often the option of locking-in RRSP fund assets for a period of time, from one to five years, in order to secure a guaranteed rate of return is confused with the legislated requirement to lock-in pension monies until pension income is secured by way of an annuity purchase. There is also a general misapprehension that the authority exists for locked-in monies to be released in circumstances where the RRSP plan holder is experiencing financial difficulty.

Some former plan members and representatives of financial institutions have expressed the view that the requirement to subject locked-in RRSPs to continued compliance with pension legislation is an unfair penalty imposed on the RRSP holder. In many cases, enquirers are seeking some means of circumventing the legislation. The fact is that this requirement was devised for the protection of plan members and their spouses. Except in situations where a marriage breakdown has occurred, assets held in locked-in RRSPs cannot be assigned or accessed by creditors. This restriction ensures that the retirement pension promised to be paid from a former employer's pension plan will in fact be paid.

Ontario Investment Fund

ON APRIL 14, the Treasurer, the Honourable Floyd Laughren, and the Minister of Industry, Trade and Technology, the Honourable Ed Philip, released a Discussion Paper on the proposed Ontario Investment Fund. Participation in the proposed fund by private or public

sector pension funds would be completely voluntary.

The objectives of the proposed fund are:

- To make long-term private sector investments that increase value-added in both emerging and traditional industries.
- To create a new financial intermediary that can foster deeper links between capital markets and businesses in need of long-term capital.

The discussion paper puts forward two options for an investment fund:

1. The fund may be organized like a development finance corporation with shares held by government, pension funds and possibly other investors.
2. A fund may be one in which pension plans and others would buy interest in the fund, somewhat like a mutual fund.

The paper states that pension funds exist first and foremost to provide pension plan members with income security in their retirement years. Retirement income, the document goes on to say, is assured by pension funds being wisely invested on behalf of members so that their pension contributions appreciate in value over time.

We are advised that there will be extensive public consultations on the proposed Ontario Investment Fund. For more information on the consultation process or to obtain a copy of the Discussion Paper, interested parties can contact: The Ontario Investment Fund Project, Ministry of Treasury and Economics, Communications Branch, Room 519, Toronto, Ontario, M7A 1Y7, telephone (416) 325-0333.

PCO Policy and Research Branch

AS PART OF THE PCO'S overall reorganization discussed elsewhere in this issue, the Secretariat has been restructured and renamed the Policy and Research Branch. The Branch's new Director is Bruce Macnaughton, who comes to PCO from the Ministry of Treasury and Economics, where he was Assistant Director, Pension and Income Security Policy.

With a staff complement of 11, the Branch

provides support to the Commission in the areas of policy and research, communications, and service quality and training. The Branch works closely with all branches in the Commission, especially the Pensions Plans Branch, to facilitate their work. Policy and Research assists the Commission in its responsibility for increasing public awareness about financial planning for retirement and pension plan coverage. The Branch continues to be responsible for the production of this Bulletin and other print materials that provide technical and information for plan members about pensions.

As the name implies, the Policy and Research Branch is the Commission's linchpin for pension policy and research. The branch works closely with policy staff from the Ministry of Financial Institutions and staff of other ministries, as required, on pension policy issues, and also co-ordinates the policy development process in the Commission.

The Commission is implementing a new, centralized quality and training program which also is housed in the Policy and Research Branch. A comprehensive program will be initiated to improve the training available to all Pension Commission Staff. At the same time, the branch will establish an enquiry unit, to respond quickly to letters and telephone calls on specific pension policy questions, and to refer plan specific calls to relevant Commission staff.

New Actuarial Services Branch Created

THE IMPORTANCE OF the actuarial function at the Pension Commission was formally recognized in February of this year with the addition of new actuarial staff and the creation of the Actuarial Services Branch under the direction of Teck Go.

The role of the actuary in the pension field cannot be overemphasized. They play a major role in virtually every aspect of the design and administration of plans. The funding of defined benefit plans depends on actuarial valuation reports. In order for the Pension Commission to regulate pension plans effectively, it must possess adequate actuarial resources to match the skills found in the industry.

The new branch will play the key role in reviewing valuation reports to ensure compliance

with both professional standards and Commission requirements. The branch will also establish guidelines for the review of valuation reports. Staff are especially looking forward to intense involvement in the policy development process - developing options and helping to prepare regulations relevant to actuarial matters.

The branch will be heavily involved in liaison with the profession. Since setting professional standards for actuaries in Canada is the responsibility of the Canadian Institute of Actuaries, it is important that the PCO and the Institute should work closely together on pension matters.

Advisory Committees Expanded

IN THREE PREVIOUS issues of the Bulletin, we discussed the formation of Actuarial, Legal, and Accounting/Auditing (formerly the inter firm audit discussion group) Advisory Committees. To help the Pension Commission continue its work, we have established an additional advisory committee with representation from the investment community.

Members of the Investment Advisory Committee met for the first time on April 28. The Committee is comprised of the following representatives:

John Ilkiw (Chairman)	Frank Russell Canada Limited
Michael J. Gallimore	Diversified Fund Management Inc.
Brigitte Goulard	Trust Companies Association of Canada
Peter G. Hellyer	Investment Association of Canada
Paul D. Matthews	Financial Executives Institute
Robert Tattersall	Society of Financial Analysts
Douglas P. Thomas	Investment Counsel Association (of Ontario)
Angus B. Warren	Canadian Life & Health Insurance Association

The Terms of Reference established for the

Advisory Committees are as follows:

Purpose of Advisory Committee:

Each Advisory Committee will provide a forum for consultation between the relevant community and the Pension Commission of Ontario on a variety of pension policy issues. This consultation process will help the Commission respond to emerging pension policy developments. Each Committee will offer advice and suggestions to the Pension Commission of Ontario, and may be asked to consider specific matters providing technical advice and comment on the practical impact of proposed pension policies.

A. General

At the request of the Pension Commission of Ontario (the "Commission"), certain representatives have been convened as a committee (the "Committee") called the (industry name) **Advisory Committee** to the Pension Commission of Ontario.

B. Terms of Reference

1. The Committee will:
 - (a) where considered appropriate by the Commission, review and comment on proposed amendments to the Pension Benefits Act and Regulation, and on Commission policy statements and amendments thereto, prior to publication for comment, or, where the change is to be effective on publication, prior to finalization;
 - (b) review and comment on such other matters as the Commission may request; and
 - (c) report to the Commission at least annually on any issues that the Committee considers should be addressed by the Commission.
2. The Director, Policy and Research Branch, of the Commission will attend all Committee meetings in the capacity of Advisory Committee Secretary and act as liaison between the Committee and the Commission. Commission staff will work directly with Committee members on particular policies as set out above.
3. Where a matter is to be submitted to the Committee for review and comment under subsection 1(a) above, Commission staff involved in the preparation of the proposal

will provide a draft version of the proposal to the Committee. The views of the Committee will be communicated directly to the Advisory Committee Secretary.

C. Composition

1. The Committee will consist of representatives invited from the (industry name) field, by the PCO.
2. In addition to the Secretary, a senior Pension Commission of Ontario representative will attend Committee meetings.
3. The Committee will meet at least once every six months. Scheduling of the meetings will be coordinated by the Secretary.
4. Membership on the Committee will rotate at regular intervals.
5. Once each year, the Committee will select one member as Chair of the Committee, to serve in that capacity for one year.
6. Once each year the Committee will review its activities and initiatives during the preceding year, and on that basis, recommend to the Commission whether or not it considers it desirable to continue the Committee.

HOOPP/OHA Court Cases

THE CASE WAS HEARD by a three judge panel of the Divisional Court on April 21 and 22, 1992. An oral decision dismissing the appeal of the Ontario Hospital Association and upholding the Commission's decision was given on April 22, 1992. Written reasons were provided on May 1, 1992.

The Court ruled that in the circumstances of this case, the Commission had the jurisdiction to review the matter where the Superintendent declines to issue an Order (under what is now section 87 of the PBA).

The Court also ruled that the foundation of HOOPP consists of two documents:

1. the original plan document, ie. the resolution of the Board of Directors of the OHA dated October 21, 1959, and;
2. a "trust agreement" dated January 1, 1960, among the OHA, the National Trust Company Limited and the Toronto General Trusts Corporation.

The Commission for the purposes of subsection 8 (1)(e) of the PBA had determined that HOOPP was established pursuant to a trust agreement. The Court agreed that the Commission was correct in concluding that both the above documents were necessary "to establish" the plan in question and further that the Commission was correct in deciding that HOOPP was established pursuant to a trust agreement within subsection 8 (1)(e) of the Act.

The Court also agreed with the Commission that the provisions of subsection 8 (1)(e) of the Act are mandatory and the administration of the plan must comply with the requirement in that subsection.

The decision of the Commission was therefore upheld.

On May 4, 1992, the Ontario Hospital Association served a Notice of Motion to the Court seeking the leave of the Court of Appeal to hear an appeal from the decision of the Divisional Court.

That motion for leave will be heard on a date that is to be fixed by the Registrar.

Regulation to amend Ontario Regulation 708/87 Made Under The Pension Benefits Act, RSO, 1990

1. Paragraph 2 of subsection 43(2) of Ontario Regulation 708/87 is revoked and the following substituted:

2. The pension plan set out in Part 11 of Ontario Regulation 67/92 (Salaries and Benefits of Provincial Judges).

2. This Regulation comes into force on the 1st day of March, 1992.

Erratum

THE PCO BULLETIN, Volume 2, Issue 4 (February 1992), page 4, referred to

"An amendment to the Regulation Regarding Investment of the Teachers' and Public Service Pension Plans".

The paragraph states that both the Teachers' Pension Plan and the Public Service Pension Plan had become subject to subsection 22 (1) (prudent person) and section 62 (investment requirements) of the PBA.

In fact, the amendment to the Regulations only affected the Teachers' Pension Plan.

The PBA Regulation which exempts the Public Service Pension Plan from certain requirements of the PBA has not changed. Accordingly, the reference to amendments to the Public Service Pension Plan should be disregarded.

Some early drafts of the Pension Commission of Ontario **Administrative Practice: Distribution of Surplus to an Employer on Wind up: Regulation 7a (1)(b)** were circulated which contain two typographical errors.

In paragraph 27 of the Practice, the reference should be to "...beneficiaries who are included in paragraph 24."

In paragraph 24 of the Practice, the reference should be to "...any plan beneficiary, as described in paragraph 25.d., for whom the plan administrator has purchased a pension..."

The full Administrative Practice will be published in the next Bulletin.

Early Retirement Windows

AN EARLY RETIREMENT window is a time-limited offering of a special early retirement benefit, payable only on retirement during the time limit, as opposed to regular early retirement entitlement under a pension plan.

Within the last two years, administrative practices have been developed by the PCO for registering early retirement window plan amendments. Although the practices have not generally been in use by the pension profession, consultation with the PCO Legal Advisory committee and industry practitioners has taken place.

As a result of these discussions the following policy will be used for applications received after March 26, 1992.

- * 1. An early retirement window is a time-limited offering of a special early retire-

ment benefit, payable only on retirement during the time limit. The window may be open for a minimum of one month and a maximum of 12 months.

- 2. An early retirement window is effected through a plan amendment which provides enhanced early retirement benefits.
- * 3. Reasonable age and/or service criteria may be used to define a group of employees who will be eligible to receive the early retirement window option. The early retirement window offer may be confined to a specific location.
- 4. General notice of the early retirement window offer must be given to all active members prior to the effective date of the plan amendment. In addition, notice must be given to any applicable union and other relevant employee group or association. The general notice to members may be given by posting it in accessible locations.
- 5. Every member of the group described in #3 must receive the offer by individual written notice, and be given at least 35 days from the date of the notice document to accept the offer.
- * 6. An early retirement window benefit may be:
 - i) an ancillary benefit; and/or
 - ii) a crediting of additional years of future service up to the normal retirement date under the plan.
- 7. Either
 - i) after the early retirement window is closed, the ratio of the market value of the assets of the plan to the solvency liabilities of the plan must be 1.0 or more; or
 - ii) where prior to the early retirement window offer, the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is less than 1.0, the ratio shall not be further reduced as a result of the window.
- * *Alternate proposals will be considered on a case by case basis.*

Different requirements may apply where a wind up or partial wind up is involved.

It should be noted that Revenue Canada requires prior approval for early retirement window proposals.

Distribution of Surplus on Plan Wind ups

PROCEDURES FOR Applications Pursuant to Subsection 7a(2) O.Reg. 743/91 Subsection 7a(2)

Subsection 7a(2) of the Regulation provides that the consent of the Commission pursuant to subsection 78(1) of the Act may be obtained if,

- (a) the payment would have been permitted by section 7a of the Regulation as it read immediately before December 18, 1991; and,
- (b) notice of proposal to wind up the pension plan was given to the Superintendent before December 18, 1991.

If an applicant is eligible to rely on subsection 7a(2) and chooses to proceed in accordance with paragraph 7a(2)(c) of the Regulation as it read prior to December 18, 1991, the applicant must follow the "Procedure on Applications under Regulation 7a(2)(c)" which was published by the Commission on August 30, 1991.

An applicant employer who satisfies clause 7a(2)(b) may proceed under either the old rules (section 7a of O.Reg. 708/87 (as amended)) or the new rules (section 7a of O.Reg. 743/91).

Circumstances in which the "grandparenting" provision of the new rules may apply, i.e. clause 7a(2)(b) of O.Reg. 743/91, include the following:

1. if notice of proposal to wind up the pension plan was given to the Superintendent of Pensions pursuant to subsection 68(2) of the Act prior to December 18, 1991;
2. if a wind up report was filed with the Superintendent of Pensions prior to December 18, 1991, in cases where the wind up of the pension plan commenced prior to 1988 (when a Notice of Proposal to Wind Up was not required);
3. if a notice of proposal to order the wind up of the pension plan was served by the Superintendent of Pensions prior to December 18, 1991;
4. if there is other written evidence which the Commission considers sufficient notice

of a proposal of wind up the pension plan in the circumstances.

Enforcement of Commission Orders

THE COMMISSION, as a general policy, will not initiate civil collection proceedings to enforce outstanding monetary orders of the Commission. Instead, the Commission will advise plan administrators that they should take all necessary steps to enforce such orders.

Where a monetary order is made by the PCO against a plan administrator, the PCO will consider the enforcement of such orders on a case-by-case basis.

Your Questions Answered

The answers to the questions set out in this section have no legal authority nor should they be construed as legal advice. You should obtain independent legal, actuarial or other professional advice if you have a particular interest in any of the matters addressed herein.

The Pension Benefits Act RSO, 1990 is the reference document, unless otherwise indicated.

Q. At what point should a plan that has no members because of the termination, retirement or death of the last member be wound up?

A. Although s. 68(1), provides an employer with discretion to wind up a pension plan, notice should be taken of the grounds on which the Superintendent may order a plan wind up (s.69 (1)).

Q. What steps can be taken to collect unremitted contributions to a pension plan?

A. Steps that can be taken include: the commencement of legal proceedings by the administrator (s. 59); the order of the Superintendent (s. 87); and prosecution pursuant to s. 109 and s. 110.

***The PCO Administrative Practices
and Policies Manual***

The Pension Commission of Ontario is preparing a manual of administrative practices and policies. We are considering making this publication available in the fall. Under this arrangement the PCO would negotiate a contract with a private firm which would distribute the manual and send new policies, procedures, and updates on existing policies to all subscribers, after their approval by the Commission.

In order to measure potential interest and assess the number of manuals required, we would like to know if you would be interested in receiving this publication on a subscriber basis. If so, please complete this coupon and return it to the PCO.

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Further information will appear in future editions of the PCO Bulletin.

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Pension Commission of Ontario
Attention: Communications Officer
101 Bloor Street West, 9th floor,
Toronto, On M7A 9Z9

Q. Under the PBA, is the payment of "finders fees" or insurance broker commissions considered an administrative expense payable out of the pension fund?

A. The role of the administrator and agents with respect to fees is governed by s. 22. Under subsection (9), the administrator is entitled to "pension benefits, ancillary benefits, a refund of contributions and fees, and expenses related to the administration of the pension plan...". Subsection (11) entitles agents to "a usual and reasonable fee and expense for the services provided" in regard to the pension plan.

Q. Is the interest earned on locked-in RRSP funds locked-in?

A. Yes. The Regulation sets out requirements for an RRSP involving s. 18(2) clauses (a) and (d). Clause (a) states that for the purpose of s. 42 transfers, monies (including investment income) held in locked-in RRSPs may not be withdrawn. They can however, be transferred to a pension fund, another locked-in RRSP, or a life annuity. Under section (d), "... no money transferred, including interest, will be commuted or surrendered" during the lifetime of the former member.

Administrator Appointment Defined Benefit Plans

Plan	Administrator/ Date of Appointment
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Anova Employees Retirement Pension Plan C-0004405	Deloitte & Touche Inc. 05/02/92
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Anova Pension Plan for Industrial Employees C-0101254	Deloitte & Touche Inc. 05/02/92
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Bell Technical Services Inc. Pension Plan C-0101754	Arthur Andersen Inc. 05/02/92
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Elan Corporation UAW Local 127 Retirement Income Pension Plan C-0014137	Price Waterhouse Ltd. 05/02/92
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Forest City International Ltd. Non-Union Pension Plan C-0015354	Ernst & Young Inc. 05/02/92
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Forest City International Ltd. Union Pension Plan C-0015434	Ernst & Young Inc. 05/02/92
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Jeffrey Group Inc. Jeffrey Group Pension Plan for Designated Executives C-0102941	Price Waterhouse 05/02/92
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Creed's Limited Employees Pension Plan C-0006559	Price Waterhouse Ltd. 13/02/92
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Coulter Financial Employees Pension Plan C-0019318	Ernst & Young Inc. 13/02/92
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Lord & Burnham Employees Pension Plan C-0007526	Price Waterhouse Ltd. 13/02/92
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Trutec Industries Hourly Employees Pension Plan C-0104040	Ernst & Young Inc. 13/02/92
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Canada Machinery Corp. Salaried Employees Pension Plan C-14249	Ernst & Young Inc. 17/02/92
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Canada Machinery Corp. Hourly Employees Pension Plan C-14190	Ernst & Young Inc. 17/02/92
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Newman Steel Hourly Plan C-16175	Peat Marwick Thorne Inc. 26/02/92
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Newman Steel Pension Plan for Salaried Employees of Newman Steel and its Associated Companies C-7528	Peat Marwick Thorne Inc. 26/02/92
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Newman Steel Pension Plan for Employees of Newman Steel Limited Local Unions 6019 and 6363 C-16229	Peat Marwick Thorne Inc. 26/02/92
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Provincial Crane Inc.
Pension Plan for Salaried
Employees of Provincial Crane Inc.
C-102257 Arthur Andersen Inc.
04/03/92

Provincial Crane Inc.
Pension Plan for Hourly-Rated
Employees of Provincial Crane Inc.
C-102256 Arthur Andersen Inc.
04/03/92

Retirement Pension Plan for
Unionized Employees of Storwal
International Inc.
C-14544 Deloitte & Touche Inc.
04/03/92

Chromalox Inc.
Pension Plan for Union Employees
of the Rexdale Plant of Chromalox Inc.
C-103203 Price Waterhouse Ltd.
16/03/92

Chromalox Inc.
Pension Plan for Certain Salaried
Employees of Chromalox Inc.
C-9302 Price Waterhouse Ltd.
16/03/92

Chromalox Inc.
Pension Plan for Employees of
Thermetic Control Division
of Chromalox Inc.
C-13584 Price Waterhouse Ltd.
16/03/92zChromalox Inc.

Pension Plan for Certain Cambridge
Hourly Employees of Chromalox Inc.
C-15362 Price Waterhouse Ltd.
16/03/92

Gaylord Marketing Communications Ltd.
Pension Plan for Employees of
Gaylord Marketing Communications Ltd.
C-15135 Price Waterhouse Ltd.
16/03/92

Sketchley Cleaning Services Ltd.
Corporate Pension Plan
C-102999 Ernst & Young Inc.
26/03/92

Sketchley Cleaning Services Ltd.
Employees Pension Plan
C-15968 Ernst & Young Inc.
26/03/92z

7 TAG Plans
Price Waterhouse Ltd.
13/04/92

Pension Plan for Management, Supervisory,
Sales and Clerical Employees of Harvey
Woods Limited C-13692

T.A.G. Apparel Group Inc., Pension Plan for
Salaried Employees of Buckeye
Industries Ltd. C-14278

T.A.G. Apparel Group Inc., Contributory
Pension Plan for Employees of
Kayser-Woods Canada Inc. and Paramount
Hosiery Inc. C-101412

T.A.G. Apparel Group Inc., Non-Contributory
Pension Plan for Salaried Employees of
Kayser-Woods Canada Inc., and
Paramount Hosiery Inc. C-101413

T.A.G. Apparel Group Inc. Pension Plan
for Salaried Employees of Penmans
Apparel Inc. C-101674

T.A.G. Apparel Group Inc. Pension Plan
for Hourly Paid Staff of Penmans C-101676

T.A.G. Apparel Group Inc. Pension Plan for
Van Raalte Employees C-100740

Administrator Appointment Defined Contribution Plans

Plan	Administrator/ Date of Appointment
Zavitz Transport International Inc. C-19208	The Canada Life Assurance Company 26/02/92
J.C. Hallman Mfg. Co. Ltd. C-000656	Mutual Life of Canada 03/03/92
Marathon Equipment Ltd. C-10933	Superintendent 05/03/92
Bayweb Limited C-17781	Superintendent 19/03/92
Ciro Excavating & Grading Ltd. C-102761	Superintendent 19/03/92
Dominion Fittings Mfg. Ltd. C-13655	Superintendent 19/03/92
Mandem Inc. C-41888	Superintendent 19/03/92
698984 Ontario Ltd. O/A Kanment Castings Centre C-19969	Superintendent 19/03/92

Orangeville Foundry Ltd.
C-103512 Superintendent
19/03/92

Power Tank Lines Ltd.
C-16761 Superintendent
19/03/92

Power Tank Lines Ltd.
C-102584 Superintendent
19/03/92

Richmond Bros. Insulation Inc.
C-102967 Superintendent
19/03/92

Classic Cargo Systems Canada Inc.
C-103565 The Mutual Group
26/03/92

Elan Corporation
C-11966 Superintendent
26/03/92

Harry Felka Wood Products
C-19517 Superintendent
26/03/92

Newman Steel
Retirement Fund for the Employees
of A. Newman & Company
A Division of Newman Steel
Warehouse Limited
C-2261 Peat Marwick Thorne Inc.
26/02/92

O'Neill Bernhardt Ltd.
C-13683 McGill Group
Ins. Agency
26/03/92

Peter's Backyard Restaurant Ltd.
C-18342 Superintendent
26/03/92

Trisen Tool & Die Limited
C-15454 Superintendent
26/03/92

Tribunal Activities

This section summarizes all matters related to the Pension Commission of Ontario.

Commission Meeting Dates 1992

The Pension Commission will convene on the following Thursdays in 1992:

July 23, August 27, September 24, October 22, November 26, December 17.

PCO Board Members

The following individuals comprise the nine-member tribunal:

Joseph Regan, Chairman	Glenn Pattinson
Deborah Hanscom	David Brown
Eileen Gillese, Vice Chair	Monica Townson
Robert Nickerson	Donald Collins
Darcie Beggs	

Hearings Before the Commission

General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991, with respect to the preliminary hearing on standing held November 1, 1990, was published in the March 1991 Vol.2, Issue 1 edition of the Bulletin. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, August 19, 20, October 23 - 25, 1991. The hearing resumed May 20, 1992.

Massey Combines Corporation Salaried Pension Plan (C-100879)

A hearing was held May 7, 1992, to review decisions of the Superintendent of Pensions dated November 21, 1991, and December 6, 1991, not to issue an order against Varsity Corporation and Price Waterhouse, the plan administrator. The Decision of the Commission is pending.

Brewers Retail Pension Plan for Bargaining Unit Employees (C-254)

A hearing will be held June 2, 1992, at 9:30 a.m. with respect to a Revised Notice of Proposal to Make an Order under section 87 of the PBA, 1990, issued by the Superintendent of Pensions on March 12, 1992, pursuant to subsection 89(2) of the PBA,

Commission Decisions -

Applications Approved Since January 1992

Applications Approved Under Subsection 7a(2) of Ontario Regulation 743/91 and Subsection 78(1) of the PBA, 1990 - Request for Return of Surplus Pursuant to a Court Order

At the Commission meeting held January 30, 1992, the Commission consented to filing with the court a consent pursuant to subsection 78(1) of the PBA, 1990 and subsection 7a(2) of Ontario Regulation 743/91 to the payment of plan surplus.

a) Haughton/ABF/Telfer Pension Plan (C-

12629) - Application by Baton Broadcasting Incorporated et al

Payment of surplus to 286859 Ontario Limited, 80122 Ontario Limited, and Baton Broadcasting Incorporated from the Houghton/ABF/Telfer Pension Plan in the following amounts, as at October 31, 1991, to:

1. 286859 Ontario Limited (formerly Telfer Packaging Limited) in the amount of \$38,014 plus investment earnings thereon to the date of payment;
2. 80122 Ontario Limited (formerly Houghton Graphics Limited) in the amount of \$239,436 plus investment earnings thereon to the date of payment; and
3. Baton Broadcasting Incorporated (ABF Business Forms Limited) in the amount of \$1,071,210 plus investment earnings thereon to the date of payment provided that this consent shall not be effective until:
 - a) The administrator of the pension plan provides the Superintendent of Pensions with written confirmation that all benefits and other payment, including enhancements, to which members, former members and any other persons are entitled on the termination of the pension plan pursuant to the pension plan have been purchased or otherwise funded;
 - b) The draft Board Resolution regarding Plan termination and benefit upgrades has been formally executed by the Company and filed with the Superintendent for purposes of registration; and,
 - c) The employer's share of the surplus attributable to Quebec members and former members, in the amount of \$421,348 has been set aside to be dealt with in accordance with the Quebec legislation.

Applications Approved Under Clause 7a(1)(b) of Ontario Regulation 743/91 and Subsection 78(1) of the PBA, 1990 - Surplus Withdrawal on Wind Up

At the Commission meeting held January 30, 1992, the Commission consented pursuant to subsection 78(1) of the PBA, 1990 and clause 7a(1)(b) of

Ontario Regulation 743/91 to the payment of plan surplus.

a) House of Morton Limited Executive Pension Plan (C-15443)

Payment of surplus to House of Morton Limited from the House of Morton Limited Executive Pension Plan in the amount of \$24,000 as at December 31, 1987 plus investment earnings thereon to the date of payment provided that this consent shall not be effective until the administrator of the pension plan provides the Superintendent of Pensions with written confirmation that all benefits and other payments to which the member is entitled on the termination of the pension plan have been purchased or otherwise funded.

b) Group Pension Plan for Employees of Durabla Canada Ltd. (C-14545)

Payment of surplus to Durabla Canada Ltd. from the Group Pension Plan for Employees of Durabla Canada Ltd. in the amount of \$105,765 as at December 31, 1987 plus investment earnings thereon to the date of payment.

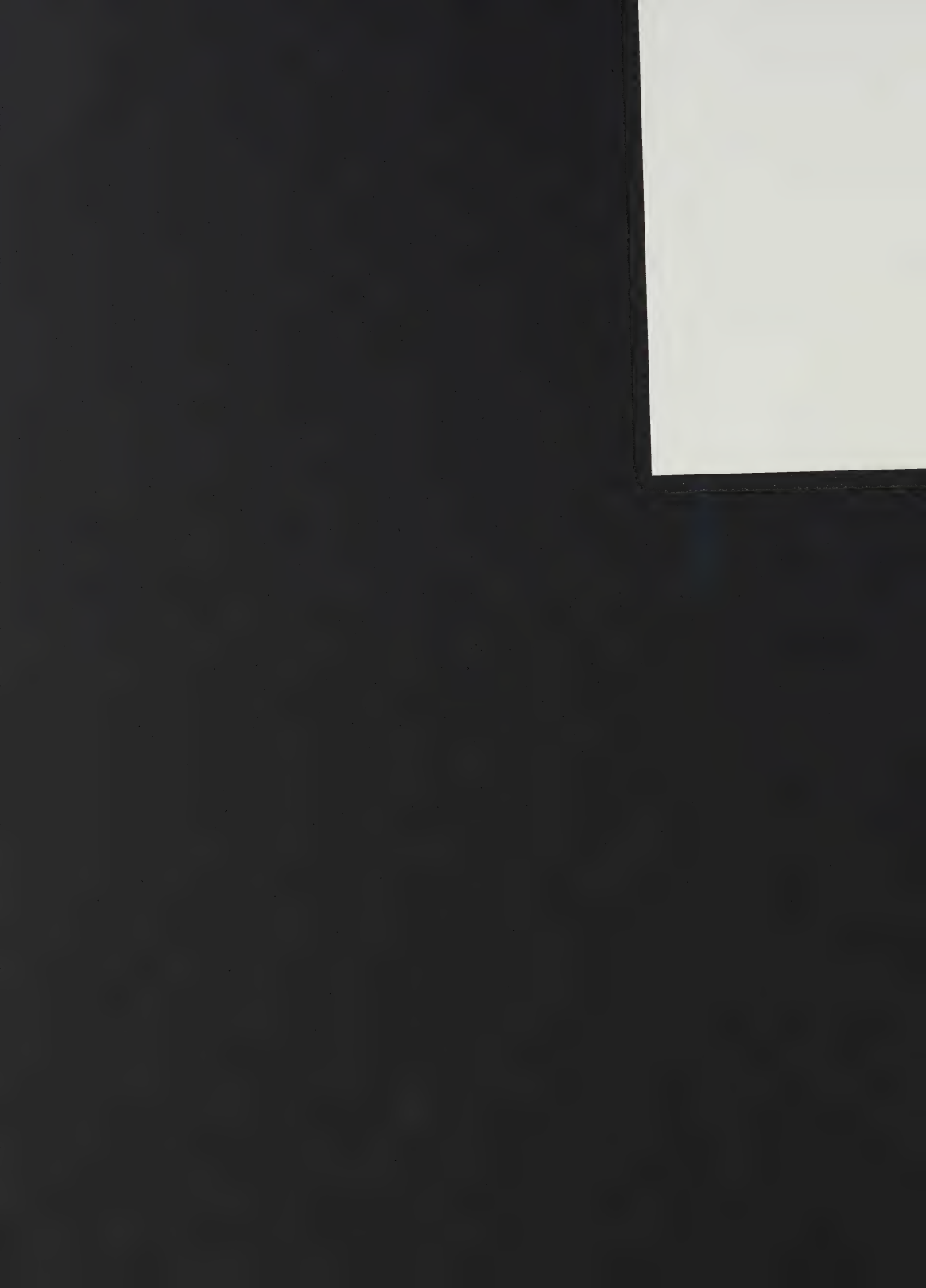
c) Hudson's Bay Company Pension Plan for T.I. Ronald (C-101020)

Payment of surplus to the Hudson's Bay Company from the Hudson's Bay Company Pension Plan for T.I. Ronald in the amount of \$55,278 as at December 1, 1988 plus investment earnings thereon to the date of payment on the condition that an amount equal to the refund to the Company is paid by the Company to the member in accordance with the surplus agreement signed by the member and the Company.

d) Dominion Forge Management Retirement Plan (C-9976)

Payment of the surplus remaining in the pension fund of the Dominion Forge Management Retirement Plan after the purchase or funding of all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan pursuant to:

- (a) the pension plan, and
 - (b) the order of the Honourable Mr. Justice Austin dated April 24, 1991.
- This consent shall not be effective until the



administrator satisfies the Commission that all of the above-mentioned benefits, benefit enhancements and any other payments have been purchased or otherwise funded.

At the Commission meeting held February 20, 1992, the Commission consented pursuant to subsection 78(1) of the PBA, 1990 and clause 7a(1)(b) of Ontario Regulation 743/91 to the payment of plan surplus.

a) Pension Plan for Employees other than Employed Lawyers of Borden & Elliot (C-13400)

Payment of surplus to Borden & Elliot from the Pension Plan for Employees other than Employed Lawyers of Borden & Elliot in the amount of \$419,300 as at December 31, 1989, plus investment earnings thereon to the date of payment.

b) Cassels, Brock & Blackwell Employee Pension Plan (C-13559)

Payment of surplus to Cassels, Brock & Blackwell from the Cassels, Brock & Blackwell Employee Pension Plan in the amount of \$81,375 as at December 28, 1989, plus investment earnings thereon to the date of payment provided that this consent shall not be effective until the administrator of the pension plan satisfies the Commission that all benefits and other payments, including the enhancements contained in the surplus sharing agreements, to which members, former members and any other persons are entitled on the termination of the pension plan, have been purchased or otherwise funded.

c) The Pension Plan for Designated Employees of Castle Building Centres Group Ltd. (H. Gower) (C-101179)

Payment of surplus to Castle Building Centres Group Ltd. from the Pension Plan for Designated Employees of Castle Building Centres Group Ltd. (H. Gower) in the amount of \$31,556 as at the date of wind up plus investment earnings thereon to the date of payment.

d) Pension Plan for Employees of Murray Kates Agencies Limited (C-17567)

Payment of surplus to Murray Kates Agencies Limited from the Pension Plan for Employees of Murray Kates Agencies Limited in the amount of \$403,071 as at December 29, 1989, plus investment earnings thereon to

the date of payment, provided that this consent shall not be effective until the administrator of the pension plan satisfies the Commission that all benefits and other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been purchased or otherwise funded.

At the Commission meeting held March 26, 1992, the Commission consented pursuant to subsection 78(1) of the PBA, 1990 and clause 7a(1)(b) of Ontario Regulation 743/91 to the payment of plan surplus.

a) Roadside Developments Limited Pension Plan for Employees (C-16170)

Payment of surplus to Roadside Developments Limited from the Roadside Developments Limited Pension Plan for Employees in the amount of \$47,849 as at December 31, 1987, plus investment earnings thereon to the date of payment.

b) Pension Plan for Senior Employees of Pathfinder Beverages Ltd. (C-19180)

Payment of surplus to Pathfinder Beverages Ltd. from the Pension Plan for Senior Employees of Pathfinder Beverages Ltd. in the amount of \$58,000 as at May 31, 1991 plus investment earnings thereon to the date of payment.

c) Pension Plan for Employees of Industrial Models (1979) Limited (C-15971)

Payment of surplus to Industrial Models (1979) Limited (the "Company") from the Pension Plan for Employees of Industrial Models (1979) Limited, Ontario Registration No. C-15971, in the amount of \$20,822 as at June 30, 1989, plus investment earnings thereon to the date of payment, on the condition that the amount of \$4,027.92 is paid to the Company in trust for payment by the Company to the Industrial Models (1979) Ltd. Employees' Pension Plan, Ontario Registration No. C-15970, pursuant to section 57 of the Act.

d) The University of Western Ontario Pension Plan for Designated Employees (C-16811)

Payment of surplus to the University of Western Ontario from the University of Western Ontario Pension Plan for Designated Employees in the amount of \$50,498 as at September 30, 1985, plus investment

earnings thereon to the date of payment.

Nullity of Commission Consent: At the Commission meeting held March 26, 1992, the Commission resolved that the consent of the Commission given on April 25, 1991, pursuant to subsection 79(1) of the PBA, 1987 and clause 7a(2)(b) of Ontario Regulation 708/87, on the following plan was a nullity.

a) Staff Pension Plan for Employees of National Business Systems Inc. ("NBS") (C-16177)

1. The consent of the Commission granted on the 25th day of April, 1991 was a nullity.
2. The applicant may proceed with a new application.

Applications Approved under Subsection 63(7) & (8) of the PBA, 1990 - Requests for Return of Member Contributions

At the Commission meeting held January 30, 1992, the Commission consented pursuant to subsection 63(7) & (8) of the PBA, 1990 to the refund of member required contributions.

a) Pension Plan for Management Employees of Family Savings and Credit Union (Niagara) Limited (C-19071)

Refund of member required contributions from the Pension Plan for Management Employees of Family Savings and Credit Union (Niagara) Limited (C-19071) in the amount of \$4,075 as at November 1, 1989, plus credited interest thereon to the date of payment.

At the Commission meeting held February 20, 1992, the Commission consented pursuant to subsection 63(7) & (8) of the PBA, 1990 to the refund of required member contributions.

a) Retirement Plan for Employees of Somerville Packaging, A Division of Paperboard Industries Corporation (C-1980)

Refund of member contributions from the Retirement Plan for Employees of Somerville Packaging, A Division of Paperboard Industries Corporation (C-1980) remitted from January 1, 1988, to May 15, 1988, in the aggregate amount of \$25,015.23 plus interest to the date of payment, payable to each member in accordance with the list provided to the Pension Commission of Ontario by the administrator.

b) Retirement Plan for Employees of Western Engineering Services Limited (C-1497)

Refund of member required contributions from the Retirement Plan for Employees of Western Engineering Services Limited (C-1497) in the aggregate amount of \$188,490.10, plus fund earnings to the date of payment.

At the Commission meeting held March 26, 1992, the Commission consented pursuant to subsection 63(7) & (8) of the PBA, 1990 to the refund of member required contributions.

a) Pension Plan for Employees of W.C. Edwards Co., Limited (C-1432)

Refund of member required contributions from the Pension Plan for Employees of W.C. Edwards Co., Limited (C-1432) in the amount of \$75,424 as at December 31, 1986, plus credited interest thereon to the date of payment.

Application under Subsection 78(4) of the PBA, 1990 - Request for Return of Employer Payments or Overpayments

At the Commission meeting held January 30, 1992, the Commission consented pursuant to subsection 78(4) of the PBA, 1990 to the refund of overpayments.

a) TRW Canada Limited Carr Division Salaried Employees Retirement Plan (C-4527)

Refund of overpayments of \$49,161.61 to the employer.

Request for Extension of Time Limit under Section 105 of the PBA, 1990 and Application for Return of Employer Payments or Overpayments under Subsection 78(4) of the PBA,

At the Commission meeting held March 26, 1992, the Commission consented pursuant to section 105 of the PBA, 1990 to extend the time limit for the filing of the request for refund and pursuant to subsection 78(4) of the PBA, 1990 to the refund of overpayments.

a) Restaurants Services Inc. (formerly Canteen of Canada Limited)

- Pension Plan for Senior and Designated Salaried Employees (C-13643)
- Pension Plan for the Vending Service Bargaining Unit Employees in Toronto and Area (C-16174)

Extend the time limit for the filing of the request for refund and refund of overpayment of \$15,845 to the employer.

Pension Benefits Guarantee Fund ("PBGF")

On February 20, 1992, the Commission, pursuant to subsection 30(3) of Ontario Regulation 708/87, allocated from the PBGF, to be paid to the Administrator of the Pension Agreement Between SunarHauserman Ltd. and The United Steel Workers of America, Local 3292 (Reg. No. C-3054), the amount of \$1,105,000 plus interest at the rate of 11.125% from February 29, 1992, to the date of payment.

- a) **SunarHauserman Ltd.: Pension Agreement Between SunarHauserman Ltd. and The United Steel Workers of America, Local 3292 (C-3054)**

Superintendent's Decisions Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, 1990, [Notice of Proposed Wind-up Order], issued a Notice of Proposal to Make an Order pursuant to section 69 of the PBA, 1990 dated February 28, 1992, for the following pension plan:

- a) **Stelco Retirement Plan for Salaried Employees (C-6968)**

The Superintendent, pursuant to subsection 89(5) of the PBA, 1990, [Notice of Proposed Wind-up Order], issued a Notice of Proposal to Make an Order pursuant to section 69 of the PBA, 1990 dated March 4, 1992, for the following pension plans:

- a) **Pension Plan for Hourly Employees of Usarco Limited (C-15367)**
b) **Revised Pension Plan of Usarco Limited for Salaried Employees (C-9777)**

The Superintendent, pursuant to subsection 89(5) of the PBA, 1990, [Notice of Proposed Wind-up Order], issued a Notice of Proposal to Make an Order pursuant to section 69 of the PBA, 1990 dated March 27, 1992, for the following pension plan:

- a) **Motor Wheel Corporation of Canada Retirement Plan for Salaried Employees (C-12424)**

The Superintendent, pursuant to subsection 89(5) of the PBA, 1990, [Notice of Proposed Wind-up Order], issued a Notice of Proposal to Make an Order pursuant to section 69 of the PBA, 1990 dated March 4, 1992, for the following pension plan:

- a) **Pension Plan for Designated Employees of Tate Access Floors Inc. (C-103686)**

The Superintendent, pursuant to subsection 89(2) of the PBA, 1990, issued a Notice of Proposal to Make an Order pursuant to section 87 of the PBA, 1990 dated March 9, 1992, for the following pension plan:

- a) **Brewers Retail Pension Plan for Bargaining Unit Employees (C-254)**

The Superintendent, pursuant to subsection 89(2) of the PBA, 1990, issued a Revised Notice of Proposal to Make an Order pursuant to section 87 of the PBA, 1990 dated March 12, 1992, for the following pension plan:

- a) **Brewers Retail Pension Plan for Bargaining Unit Employees (C-254)
Orders**

The Superintendent issued an Order pursuant to section 69 of the PBA, 1990 [Wind-up Order] dated January 24, 1992, for the following pension plan:

- a) **Pension Plan for the Salaried Employees of Warren K. Cook Limited (C-2928)**

Decisions

Pension Plan for Union Employees of ArrowHead Metals Ltd.

The following decision of the Commission dated March 26, 1992, with respect to a hearing held January 17 and 20, 1992, has been appealed.

IN THE MATTER OF the Pension Benefits Act, 1987, RSO 1987, c. 35;

AND IN THE MATTER OF an application by ArrowHead Metals Ltd. to the Pension Commission of Ontario for its consent pursuant to sections 79 and 80 of the Pension Benefits Act, 1987, and paragraph 7a(2)(c) of Reg. 708/87 thereunder.

BETWEEN:

ARROWHEAD METALS LTD., Applicant

- and -

THE ROYAL TRUST COMPANY

and the Respondents Named in Schedule "A" attached to the Notice of Application in the court proceedings herein, Respondents

BEFORE: M. Joseph Regan, Chair, Eileen E. Gillese, Vice-Chair and Board members Donald Collins, Deborah Hanscom and Glenn Pattinson

APPEARANCES: J. Brett Ledger and Thane Woodside for the Applicant;

Barrie Chercover and Bertha Greenstein for the Respondents, the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada and the Respondents named in Schedule "A"

John R. Varley for the Respondent, The Royal Trust Company

DATE OF THE HEARING: January 17 and 20, 1992 Toronto, Ontario

DECISION OF THE BOARD REGARDING: ARROWHEAD METALS LTD.

March 16, 1992

REASONS FOR DECISION

NATURE OF THE APPLICATION

Arrowhead Metals Ltd. (the "Applicant") seeks the consent of the Pension Commission of Ontario (the "Commission") to the withdrawal of surplus from the Pension Plan for Union Employees of Arrowhead Metals Ltd. (the "Plan"). The Plan was terminated as at November 8, 1989, at which time the surplus amounted to something in excess of \$3,750,000. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, Local 399 ("CAW") was the bargaining agent at all relevant times for the individual hourly employees covered by the Plan; it represents the interests of all individuals, including deferreds and retirees, for the purposes of this proceeding.

The application was brought pursuant to sections 79 and 80 of the Pension Benefits Act, 1987, S. O. 1987, c. 35 (the "Act") and clause 7a(2)(b) of Ontario Regulation 708/87 (the "Regulation"). For the sake of consistency and convenience, we will refer to the same provisions despite the fact that the consolidation of the Act in the 1990 revised statutes of Ontario has resulted in changes to the relevant section numbers.

PRELIMINARY MATTER

The Royal Trust Company (the "Trustee") is Plan Trustee and stakeholder and named as a party to the proceedings. Counsel for the Trustee indicated very early on in this matter that he intended to take no active part in the proceedings as he was satisfied that all interests were fairly and fully represented. He did ask, however, that any order issued by the Commission in this proceeding "recognize those provisions of the 1988 Trust Agreement which permit Royal Trust to retain its own counsel and pay their reasonable expenses and compensation; which direct payment of Royal Trust's own charges, as well as its expenses; and which create a charge on the Trust Fund for such charges and expenses". Counsel for Royal Trust made it clear that he was not seeking an award of costs but only a recognition of Royal Trust's entitlement to reimbursement pursuant to the terms of the most current Trust Agreement (the "Trust Agreement").

No authority was cited to us for the proposition that we had the power to make such an order. We are unaware of any statutory provisions in the Act that would empower us to make such an order. While the matter was not fully argued before us, it is our view that we do not have the jurisdiction to make such an order and we decline to do so.

In coming to this decision, we are mindful of the fact that there was no suggestion that the Trustee would encounter any difficulty in recovering such costs pursuant to the existing agreements between the Trustee and the Applicant.

SURPLUS ENTITLEMENT UNDER CURRENT PLAN DOCUMENTATION

It was conceded generally that the requirements contained in clauses (a), (c) and (d) of subsection 80 (4) have been met by the Applicant. At issue is the question whether clause (b) of that subsection has been fulfilled. Clause (b) precludes the Commission from consenting to an application in respect of a pension plan that is being wound up unless

“the pension plan provides for payment of surplus to the employer on the wind up of the pension plan”.

Paragraph D5.3 of the current Plan text provides that:

“On termination of the Plan, no part of the assets of the Plan shall revert to the benefit of the Employer until provision has been made for all benefits which have accrued to Members in respect of membership up to the date of such termination. Any funds held for the purpose of effecting such provision, shall remain invested in accordance with Government Pension Legislation. If there is any fund remaining after satisfaction of all liabilities under the Plan, such residue shall be returned to the Employer, subject to Government Pension Legislation.”

A plain reading of Paragraph D5.3 leads us to the conclusion that it provides for surplus reversion to the Applicant on plan wind up.

It is clear law that our inquiry is not limited to an examination of the Plan text; the language of the Trust Agreement must also be examined in determining whether clause 80(4)(b) has been satisfied. In pension plan situations of the sort under consideration, both a plan text and a trust fund must exist in order for the plan to become operational. The rights and obligations of the parties to a private pension plan of this sort are determined by reference to the documents by which the plan is created i.e., the Plan text and the Trust Agreement. (*Re Reeve and Montreal Trust Co. of Canada* (1986), 53 O. R. (2d) 595 at 596 (Ont. C.A.); leave to appeal to S. C. C. refused 56 O. R. (2D) 192.

There is no express provision in the Trust Agreement that surplus is to revert to the Applicant on plan wind up. On the other hand, there are no provisions to the effect that employer contributions are irrevocable or that all contributions are to be for the exclusive benefit of members. Thus, it becomes a question of construction whether the terms of the Trust Agreement “provide for payment of surplus to the employer on wind up” as required by clause 80 (4) (b). The provisions in the Trust Agreement which touch upon this matter are Sections I, XI and XII.

SECTION I

TRUST FUND

... The Trust Fund shall be held by the Trustee in trust and shall be dealt with in accordance with the provisions of the Agreement. At no time shall any part of the Trust Fund be used for or diverted to purposes other than those pursuant to the terms of the Plan.

(“Plan” is defined in the preamble to the Trust Agreement as the Pension Plan for Union Employees of Arrowhead Metals Ltd.)

SECTION XI

TERMINATION OF THE PLAN

In the event of the termination of the Plan as provided therein, the Trustee shall, subject to the satisfaction of all the liabilities with respect to the members and their beneficiaries under the Plan, dispose of the Trust Fund in accordance with the written direction of the Company.

SECTION XII

AMENDMENT OF THE TRUST AGREEMENT

The Company reserves the right at any time and from time to time to amend, in whole or in part, any or all of the provisions of the Agreement by notice thereof in writing delivered to the Trustee, provided that ... no such amendment shall authorize or permit, at any time prior to the

satisfaction of all liabilities with respect to the members and their beneficiaries under the Plan, any part of the Trust Fund to be used for or diverted to purposes other than those provided for under the terms of the Plan and Section V of the Agreement....

(Section V of the Agreement deals with the compensation of the Trustee.)

To paraphrase, Section I provides that the Trust Fund is to be used for the purposes of the Plan which, according to Paragraph D5.3, provides for surplus to be returned to the Applicant on Plan wind up; Section XI provides that, upon termination of the Plan and satisfaction of all liabilities under the Plan, the Trustee is to dispose of the Trust Fund according to the wishes and direction of the Applicant; and, Section XII enables the Applicant to amend the Trust Agreement provided all existing liabilities have been satisfied.

Our reading of the current Plan documentation, considered as a whole, leads us to the following view. The Trust Agreement provides that the fund is to be used for the purposes of the Plan, the Plan text expressly provides that surplus is to revert on termination and, as there is no language in the Trust Agreement constraining the Applicant from calling for the surplus on termination, the current pension plan documents provide for surplus reversion to the Applicant.

The Applicant submits that, upon reaching this finding, the role of the Commission is exhausted and we are precluded from going on to determine whether the provisions themselves are valid. This submission is based upon the reasons for decision of Corbett, J. in Otis Canada Inc. v. The Superintendent of Pensions for Ontario et al., (1991), 2 O. R. (3d) 737 (O.C.G.D.) (“Otis”).

Thus, we must next decide whether the Commission is precluded from an examination of prior documents in determining whether the current plan provisions are valid. If we are not so precluded, we must go on to determine whether the provisions are valid. In so doing, we will have to grapple with the proposition that pension trusts are really purpose trusts and, therefore, not properly dealt with according to traditional trust principles. We will have to examine, as well, the relationship between powers of amendment and the right of revocation. Finally, we may have to consider the additional argument raised that, in any event, CAW involvement in plan amendments precludes it from contesting the validity of the current provisions.

THE COMMISSION’S ROLE IN RESPECT OF CLAUSE 80(4)(b)

The Applicant submits that the role of the Commission, in determining whether clause 80 (4) (b) is satisfied, is limited to an examination of the most current versions of the Plan text and Trust Agreement. In making this submission, it relies upon the following passage from Otis, supra, at p. 742.

“... In short, the existing plan text provided for a refund to the employer of any surplus monies in the pension fund after payment of all benefits required to be paid to members by statute or under the plan. There is no doubt the existing plan contained an express provision for the refund of surplus upon plan wind-up. For reasons which are unclear to me, the Commission did not refer to the 1982 plan as amended but found that the “pension plan” was the plan operational at the Otis plant in 1963. The historical development of a pension plan may be relevant for other purposes but not for the purpose of interpreting the provisions of the PBA to be applied at a given point in time. In my opinion, the Pension Commission need go no further, in the first instance, than to look at the existing plan text to see whether there is an express provision for the refund of surplus.” (emphasis added)

We reject out of hand the suggestion that our review is limited to a scrutiny of the Plan text alone. The legislation speaks of “the pension plan” and not merely the plan text; moreover, it is abundantly clear from a host of cases that all documents comprising a pension plan must be scrutinized when determining a question of rights or obligations under a plan. We dealt with this point earlier in our judgment so nothing more need be added here except to point out that even the Applicant does not go so far as to suggest that we ignore the Trust Agreement but rather concedes that we are to consider

it and the Plan text when determining whether clause 80 (4)(b) has been satisfied.

Assuming that the extract just quoted from Otis is revised to read “Plan documentation”, thereby encompassing all the documents necessary to create a pension plan, we note that in any event the comments are obiter and, therefore, not binding upon us. Nonetheless, the wording of the admonition is so strong and its ramifications so over-reaching that we feel obliged to consider whether the legislation bears such an interpretation. We begin by re-examining the wording of clause 80(4)(b).

s. 80 (4) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless, ...

(b) the pension plan provides for payment of surplus to the employer on wind up of the pension plan;

It can be seen that the Act itself contains no limitation such as the one proposed in Otis. It states simply that Commission consent to surplus withdrawal by an employer cannot be given absent provision to that effect in the “pension plan”. Thus, it becomes imperative that we determine what is meant by the words “pension plan”.

“Pension plan” is defined in section 1 of the Act as “a plan organized and administered to provide pensions for employees”. The breadth of the definition is consistent with the many cases which have viewed pension plans as the sum of all documentation necessary to create the pension plan, which includes the documents from inception. In short, neither the legislation nor the cases which have dealt with the meaning of a pension plan are consistent with the limited view of Commission involvement proposed in Otis.

Is such a limited role consistent with the Commission's role under the legislation? We feel it is not. We are here to ensure that the Act and regulations are properly administered (s. 97). The role of the Commission has been described as that of a “watchdog”. This description is particularly apt in the context of surplus withdrawal applications where the legislation vests primary responsibility with the Commission. This is in direct contrast with the function that the Commission plays in the balance of the Act which is to sit on appeal from decisions of the Superintendent. The “first instance” role strongly intimates that there is to be close attention paid to the facts, of which the history of the documents must be a crucial part.

The courts have not hesitated to state that the Commission is a fiduciary and ought to zealously guard the rights of plan beneficiaries. How can we exercise a fiduciary standard if we look only to current Plan documents? What if the current documents are not valid? Without examining predecessor documents we cannot know that current documents are valid. Otis, in making the suggestion that it did, flies in the face of countless decisions of Ontario courts which have called upon the Commission to take seriously its fiduciary obligations.

The Commission's role under the legislation is one of substance and not form. To limit our examination to the current plan provisions is tantamount to becoming a rubber stamp as we would be forced to accept the validity of documents, once filed.

Thus, we are of the view that the Commission is not restricted to a review of current plan documents when ascertaining whether “the pension plan provides for payment of surplus to the employer on wind up”. We go further and state that such an approach would be an abdication of the trust reposed in us by plan beneficiaries and a breach of our statutory obligations.

If we are wrong in law in our interpretation of clause 80 (4)(b), or if the extract from Otis is found to be binding upon us, we believe that we are entitled to go behind the current documents for the following reason. The statement in Otis that the Commission is limited in its review of documentation for the purposes of clause 80(4)(b) is qualified by the words “in the first instance”. What do the words “in the first instance” mean? Arguably, those words mean that if there is something which suggests we ought to go behind the current documents, we may do so. In this instance, the provision in the original

Plan text that “No part of the assets of the trust or trusts shall revert to the Company”, cries out for us to go behind the current documents and determine if the provisions are validly in place.

The history of the various plan documents is considered in the section entitled “History of the Plan Documentation”, below. Before turning to that matter, we must consider the Applicant’s submission that a pension trust is a purpose trust because a resolution of that issue bears directly on whether the various Plan and trust amendments were valid.

ARE PENSION TRUSTS MORE PROPERLY CHARACTERIZED AS PURPOSE TRUSTS?

The Applicant submits that “common law trust principles have limited application to cases such as this one”. This line of argument has its genesis in *Hockin et al. v. Bank of British Columbia et al.*, (1990), 46 B.C.L.R. (2d) 382 (B.C.C.A.) where it was said (at p. 391) that “... some of these standard attributes of a trust are attenuated or even non-existent. Operatively, the plan is the dominant document and the trust is ancillary to the plan with the trustee functioning, as will be seen, more akin to a stakeholder than strictly a trustee”. The reasoning was quoted with approval in *Otis, supra*, and the recent case of *CrownX Inc. v. Rick Edwards et al.*, (unreported decision of Blair, J., released November 27, 1991 (O.C.G.D.)). This line of reasoning, in short, suggests that a pension plan is pre-eminently a contractual arrangement and the pension trust is ancillary thereto. This is an inversion of the normal paramountcy of equity and is based on the premise that the pension trust is more akin to a purpose trust than to a traditional trust.

Purpose trusts are trusts for which there is no beneficiary; that is, they are trusts where no person has an equitable entitlement to the trust funds. Funds are deposited in trust in order to see that a particular purpose is fulfilled; people may benefit, but only indirectly. That is precisely why the law has been so chary about accepting the validity of purpose trusts. They were said to offend “the beneficiary principle”. That is, there was no person who could go to court and complain if the trustee failed to properly perform. The only exceptions, historically, to the rule against purpose trusts have been for charities and animals. Charities were exempt because the Crown, through the Office of the Attorney General, would oversee the execution of the trust thereby preventing abuse and ensuring that the trust was performed.

The benchmark difference between a “traditional” trust and a purpose trust is that the indirect beneficiaries of a purpose trust can never gather together and call for the trust property on the basis of the principle in *Saunders v. Vautier* (1841), 4 Beav. 115; affd. Cr. & Ph. 240; 10 L.J. Ch. 354 as they are not, in the eyes of equity, the owners of the property; in contrast, the beneficiaries of a trust, so long as they are *sui juris* and together absolutely entitled to the trust property, can determine the trust and call for the trust property. The application of this principle is precisely what has been going on in the pension surplus cases to date. Where employers are found to have absolutely parted with ownership rights over the trust fund and the plan has been wound up, the plan beneficiaries have obtained a court declaration of their rights and then called for the trust funds (subject to compliance with the Act and regulations). Are all those cases improperly decided? Can it be said that pension trusts are not created for the direct benefit of persons? Surely that is the very reason for their existence. Can it be said that there is no one with equitable entitlement to the funds such that they can go to court to ensure that the trust is performed? Again, the answer to that question must surely be “no”. People are the direct beneficiaries of pension trusts. Pension trusts are established not to effect some purpose, such as building a recreation centre, but to provide money on a regular basis to retired employees. It misconceives both the nature of a purpose trust and of a pension trust to suggest that pensions are for purposes, not persons.

It is important to recognize that the characterization of pension trusts as purpose trusts results in the pension text, a contract, taking precedence over the trust agreement. That is, it makes common law principles of contract law paramount to the equitable principles of trust law. It is trite law that where

common law and equity conflict, equity is to prevail. In light of that rule, it seems inappropriate to do indirectly that which could not be done directly. Moreover, to hold that the terms of the contract (i.e. plan text) prevail, will be to effectively eliminate the rights of at least two interested groups, namely, deferreds and retirees, neither of whom remain as parties to the contract when they cease employment.

The Ontario courts, with the recent exception of a very few cases such as those mentioned at the beginning of this section, have found equitable and trust principles flexible enough to resolve these matters; we see no need to depart from them now and inject uncertainty into an area of law which has only recently taken shape.

HISTORY OF THE PLAN DOCUMENTATION

We come finally to the question which lies at the heart of the matter. Is the current plan language that provides for surplus reversion to the employer valid? Was it properly introduced into the plan documents? To answer these questions, we must consider the history of the Plan.

Effective December 31, 1964, Anaconda American Brass Limited (“Anaconda”) established a pension plan for its hourly employees (the “Anaconda Plan”). It, too, was a non-contributory, flat benefit, defined benefit pension plan. By agreement made as of May 15, 1978, between Anaconda and a numbered company, the two were amalgamated to continue as one corporation under the name Arrowhead Metals Ltd., the Applicant. Effective June 1, 1978, the Applicant continued the Anaconda Plan by approving and adopting the Pension Plan for Union Employees of Arrowhead Metals Ltd. (“the original Arrowhead Plan”). The original Arrowhead Plan was a successor pension plan to the Anaconda Plan.

The Plan documentation considered above in the section titled “Surplus Entitlement Under Current Plan Documentation”, shows that Paragraph D5.3 of the Plan text expressly provides for surplus reversion to the Applicant. By virtue of Section I of the Trust Agreement which stipulates that the funds be used for purposes of the Plan and, in the absence of conflicting provisions, we found that under the terms of the current Plan documentation surplus was to revert to the Applicant. It can be seen that we must determine, therefore, whether Paragraph D5.3 of the Plan text is valid.

PLAN TEXT PROVISIONS

A surplus reversion clause, identical to that in the current Plan text, first appears in Paragraph D5.3 of the original Arrowhead Plan text. The original Arrowhead Plan text was amended and restated a number of times but, in all cases, the language of Paragraph D5.3 was retained. The original Anaconda Plan text and subsequent versions thereof, had no such provision.

Was the insertion of Paragraph D5.3 in the original Arrowhead Plan text permissible in law? s.7.3 of the original Anaconda Plan gave the company an unlimited right of amendment.

7.3 The Company reserves the right to modify or amend in any respect or terminate, in whole or in part, this Pension Plan at any time for any reason whatsoever, provided that no pension properly granted pursuant to the Plan shall be affected by such termination or modification. On and after termination, no further pension rights or obligations shall accrue under this Plan.

However, s.6.2 provided that “No part of the assets of the trust or trusts shall revert to the Company.”

As the two provisions are contained in the same document, they must be construed so as to give effect to both, if at all possible. For both to have effect, we must read s.6.2 as being subject to s.7.3 and therefore susceptible of amendment. That is, s.7.3 gave the company the power to amend all provisions including s. 6.2. Thus, there was nothing in the original plan text (nor subsequent amendments) which precluded the insertion of D5.3.

This brings us to the question whether there was anything in the Trust Agreements which precluded or barred the insertion of Paragraph D5.3.

THE TRUST AGREEMENTS

There was only one trust agreement entered into by Anaconda and that was the original trust agreement effective December 28, 1964 ("the original Trust Agreement"). It was silent on the issue of surplus.

There was no language in the original Trust Agreement that contributions were to be irrevocable or for the exclusive benefit of the employees. The only directly relevant language is to be found in the first two paragraphs of the Preamble, which read as follows.

WHEREAS the Company has established a Pension Plan (herein referred to as "the Plan") for the benefit of certain of its employees, a copy of which is attached hereto as Schedule "A";

AND WHEREAS the Company intends to settle irrevocably in trust all monies and other assets contributed for the purposes of the Plan to be held by the Trustee in a Trust Fund (herein referred to as "the Fund");

We note that statements in a preamble are of no legal force; at most, they are a guide to interpretation. We note as well, that the first paragraph does not read "for the exclusive benefit of employees" and that the "irrevocable" statement does not say "irrevocably to the benefit of employees" but, rather, that the funds would be "irrevocably ... contributed for the purposes of the Plan." Thus, we find no provision in the original Trust Agreement, express or implied, that all monies in the trust fund were to belong to the Plan members.

Section 30 of the original Trust Agreement gave Anaconda a broadly worded power of amendment. The only limit on the company's power of amendment was that it could not "authorize or permit . . . the fund to be used for . . . purposes other than those specified in the Plan". Can the argument be made that, because section 30 referred to the original Plan text which contained s.6.2 — "No part of the assets of the trust or trusts shall revert to the company" — the original Trust Agreement precluded the Plan text amendment? We think not. s.7.3 of the original Plan text provided for the amendment of s. 6. 2, as discussed above. By referring to the "Plan", the original Trust Agreement referred to all its provisions, including s. 7.3, which enabled the company to amend s.6.2. Thus, we find that the original Trust Agreement did not prevent the Applicant from inserting D5.3 into the Plan text.

Had s.6.2 been contained in the Trust Agreement, as opposed to the Plan text, we would have faced the difficult question of whether an unrestricted power of amendment includes a power of revocation but, in light of the foregoing, that need not be answered at this time.

CAW INVOLVEMENT IN PLAN AMENDMENTS

Given the foregoing, there is no need to address the issues that were raised in respect of CAW involvement in plan amendments.

ORDER

Pursuant to sections 79 and 80 of the Act and clause 7a(2)(c) of the Regulation, the Commission consents to the payment to the Applicant of any surplus remaining in the Trust Fund in respect of the Plan after the satisfaction of all defined Plan liabilities.

DATED AT TORONTO this 26th day of March, 1992.

M. Joseph Regan, Chair

Eileen E. Gillese

Donald Collins

Deborah Hanscom

Glenn Pattinson

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General Inquiries/Policy Issues	Susan Ellis	314-0703
	Cynthia James	314-0702
Registrar/Secretary to the Commission	Mary Crocker	314-0625

For plan related inquiries, refer to the following:

1. SECTOR ALLOCATIONS (at least one plan with 250 or more members)

Sectors	Pension Officer	Alternate
Agriculture, Mining, Construction, Finance...	Rosemine Jiwa-Jutha 314-0611	Alain Malaket 314-0609
Trade, Commercial, Public Administration.	Larry Falconer 314-0610	Doug Kaye 314-0605
Food, Beverages, Textiles, Paper...	Jaan Pringi 314-0586	John Staric 314-0596
Rubber, Plastics, Transportation Equipment	Larry Martello 314-0587	Mark Eagles 314-0599
Printing, Primary Metals, Machinery...	Mark Henry 314-0584	Penny McIlraith 314-0594
Electrical, Non-Metallic, Chemicals...	David Kearney 314-0590	Natasha Vandenhoven 314-0598

**2. Alpha Allocations - Defined benefit & Multi-Employer Plans
(plans with less than 250 members)**

Alpha Range		Pension Officer		Alternate	
A	-BRI	David Allan	314-0612	Elizabeth Addo	314-0607
BRO	-COM	Steve Young	314-0646	Brigitte Khan	314-0640
CON	-EZZ	Jules Huot	314-0613	Claude De Souza	314-0608
F	-HAZ	Larry Murray	314-0644	Merle Corbie	314-0637
HEA	-KMZ	William Qualtrough	314-0641	Lynn Barron	314-0639
KNA	-MOQ	Elizabeth Carter	314-0604	Wynnell De Landro	314-0603
MOR	-PNZ	Stanley Chan	314-0635	Sandy Malloy	314-0636
POL	-SHE	Maureen Barber	314-0645	Anthony Gullone	
SHI	-TORO	Daphne Ludgate	314-0592	Margaret Fennell	314-0600
TORR	*	John Graham	314-0647	Brigitte Khan	314-0640

3. Alpha Allocatons - defined contribution plans

Alpha Range		Pension Analyst		Alternate	
A	-BAX	Sandy Malloy	314-0636	Stanley Chan	314-0635

* Companies with numeric-alpha names.

BAY	-Canada	Doug Kaye	314-0605	Larry Falconer	314-0610
Canadian	-COK	Margaret Fennell	314-0600	Daphne Ludgate	314-0592
COL	-DIL	Claude De Souza	314-0608	Jules Huot	314-0613

Alpha Range		Pension Officer		Alternate	
DIM	-FLO	Elizabeth Addo	314-0607	David Allan	314-0612
FLU	-HAL	Alain Malaket	314-0609	Rosemine Jiwa-Jutha	314-0611
HAM	-JAL	Brigitte Khan	314-0640	John Graham	314-0647
JAM	-LEU	Wynnell De Landro	314-0603	Elizabeth Carter	314-0604
LEV	-MIL	Penny McLraith	314-0594	Mark Henry	314-0584
MIN	-ONT	Natasha Vandenhoven	314-0598	David Kearney	314-0590
ONU	-RAL	Anthony Gullone		Maureen Barber	314-0645
RAM	-SHA	John Staric	314-0596	Jaan Pringi	314-0586
SHE	-THA	Merle Corbie	314-0637	Larry Murray	314-0644
THE	-VUL	Lynn Barron	314-0639	William Qualtrough	314-0641
VUM	*	Mark Eagles	314-0599	Larry Martello	314-0587

4. Alpha allocations - pension plans of insolvent companies

Alpha Range		Coordinator	
A	-E	Jai Persaud	314-0595
F	-P	Robin Gray	314-0593
Q	*	David Rogers	314-0597

* Companies with numeric-alpha names.

The PCO Bulletin is published by the Pension Commission of Ontario, 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2 (416) 963-0522 fax (416) 963-9585

The material in this issue of the Bulletin has been prepared by the PCO for the general information of people involved in pension plans in Ontario. The information contained here should not be construed as legal advice. The Pension Benefits Act, RSO 1990, the Regulation (as amended), and terms of a pension plan, and the policies and practices of the PCO as they may be from time to time should be considered to determine specific legal and legislative requirements.

THE PENSION COMMISSION OF ONTARIO BULLETIN

October, 1992

Vol. 3, Issue 2



Getting to the Future: The Coverage Challenge

IN JUNE OF THIS YEAR, PCO Chairman Joseph Regan addressed the 16th Annual Conference of the Association of Canadian Pension Management, in Charlottetown. The following remarks are excerpted from his presentation.

I was told I was free to indulge in some crystal ball gazing here today. That will be fine with me so long as we all gaze together. The future of the pension industry is important to everyone.

Instead of jumping to the future let us first review the present situation. Though improvements can always be made, the fact is Canada has one of the best private pension plan systems in the world despite diversity of rules across jurisdictions.

If we focus on vesting, locking in and portability it is easy to see the major leap we have made in pension reform. This is most evident in the fact that pension plan members can now "take their rights with them" as they move through careers with increasing mobility.

Another major improvement is the new approach to the investment of pension funds. I am referring to the Rule of Prudence. Not that the requirement to be prudent is new but rather the necessity of formalizing investment policy goals and strategies. This alone has caused a new awareness of the importance of fund management in securing pension benefits.

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Among other significant aspects of pension reform is the clearly defined role of administrators. We tend to think of the administrator when the question of responsibility arises. This is consistent with most pension legislation since pension reform was instituted. Add the increased disclosure requirements and one can easily see the sphere of responsibility for fund management broadened to include members.

If it is in the members' interest to know how the plan is run and how the funds are being invested, it is a short step to conclude that members ought to become more involved in the process. This involvement - commonly called "shared governance" - is becoming more frequent. We increasingly see plans with members on management committees; members are contacting regulators to enquire about what administrators must and should do; and, members are asking how they can get involved. In Ontario, even those receiving pensions in pay may be members of pension committees.

The shared governance approach will likely become the norm in public sector plans. Recently, two major public sector pension plans in Ontario moved to a form of joint governance with equal employer/employee representation on the pension committee and an equal sharing of risks and rewards.

Pension Commission staff are becoming increasingly active in communicating with members of pension plans. As the industry regulator, we have a duty to remind administrators that all plan members should fully understand their rights and entitlements. In this regard we will shortly be publishing a book called "Understanding Your Pension Plan". Administrators will be asked to distribute this booklet to their plan members.

Of course this only applies to employees who are lucky enough to be members of pension plans. What about the 60-70 per cent of "uncovered" workers? The same groups remain unassisted by pension reform - those earning less than \$20,000.00 a year; workers not belonging to unions; people working in a firm with less than 100 employees; and those in certain areas such as wholesale, retail and personal services.

Ironically, even in today's employment market employers are having difficulty attracting qualified, motivated staff. There is little doubt that employers with pension plans have a hiring edge. Employers not yet sponsoring a plan for their employees need to be brought on board. Here we have a massive communications chal-

lenge. The fact is that after five years of pension reform in Ontario we have fewer registered plans: a drop from 10,500 in 1987 to 8,000 today.

We all know the reasons - costs are too high, over-regulation, the recession, downsizing, restructuring, liquidating and the uncertainty of future legislation. And of course there is much debate about the relative merits of defined benefit and defined contribution plans, group RRSPs and personal RRSPs.

There is a growing feeling that defined benefit plans are suitable only for the public sector and any large companies that remain after this period of restructuring and readjusting to global economic situations.

Where does this leave the regulator? It leaves us monitoring and administering plans to ensure the protection of member entitlements. But it is problematic when a significant part of the regulatory effort is going into winding up plans - especially when pension legislation has a clear mandate to promote coverage.

What are we going to do about coverage? The issue is broad, yet the focus must clearly be on retirement financial planning. That is, ensuring individuals have the financial resources to live their retirement years with dignity.

A scan of the past fifty years reveals an increasing array of public income security programs: compulsory unemployment insurance in 1940; old age pensions in '51; the RRSP program in '57; medicare and CPP in '66 and GIS in '67. These programs seemed to provide a reasonable safety net until the arrival of double digit inflation in the late seventies.

In the last few years, we have become more aware of the tremendous funding challenges faced by the CPP. Within 25 years the combined employer/employee contribution rate will rise to approximately 10 per cent (some say 14 per cent) - versus 4.8 per cent today. Still, the retirement benefit offered by government programs will hardly accommodate the needs of an avalanche of baby boomers into the retirement ranks.

Of course these programs are indexed. (Although there may be a growing erosion of buying power over the long term.) As for the issue of full or partial indexation for private pension plans, our politicians continue to study the situation. I suppose the recipient of a benefit from any private pension plan can easily see the need for some type of formal indexation. Ad hoc increases are unpredictable at best. The real question is of course funding.

The other major program to be looked at is the private RRSP and the important recent changes resulting from federal pension reform. The problem here is one of attitude: Is this a tax-savings program or a retirement-planning program? Obviously both, but it is reduced to a mere savings program if the money is removed before retirement. And even with the best intentions to maximize contributions, affordability remains the key.

Now I am beginning to see something clear in that crystal ball. We are facing a crisis of decision and that decision revolves around mandatory pension coverage. It may not be the Canadian way but it may have to become so. Many countries in Europe have some requirement already. Apparently Australia is looking at this and Britain has a form of mandatory coverage. Should companies with a certain number of employees be required to have a pension plan? Should the CPP be greatly expanded? Should those RRSPs be mandated as retirement plans and therefore registered and regulated? We are going to have to deal with these questions before the end of the decade.

Any future planning must take into account the increasing presence of women in the workforce. From Statscan we learn that two-income families are becoming the norm: 62 per cent of all families have both partners working. Forty-nine percent of male employees have pension coverage as compared to 39 per cent of female employees.

There is another looming question: What indeed is retirement? Will society retain the concept of working for a living until a certain age and then not working but receiving an income until death? There are already signs of retirement being redefined. If people live longer it will cost more in terms of pensions; but if they are also healthier they will want to be doing things, perhaps some form of paid work.

At the Public Forum on Pensions in Toronto last September, three themes emerged: cost, complexity, and communications. Yes, pensions are costly; Yes, regulation is complex; and Yes, we can all do much more right now in the area of communications.

We can promote pensions, we can educate members, we can encourage retirement financial planning and we can make the public aware of the need to be prepared for the future.

And that we must do, particularly in light of demographic trends leading towards the year 2035. I am referring to our greying "baby-boomers" and the increasing cost associated with

supporting this segment of the population. Add the fact that few are adequately preparing for their own retirement and an ominous cloud appears in our crystal ball.

Perhaps you are aware of the recent Statscan report on AGEING AND INDEPENDENCE. Among its many findings two are particularly startling:

1. Forty-one per cent of Canadians aged 45-64 have made no active preparation for retirement; yet,
2. Sixty-seven percent believed in the adequacy of their future retirement income.

It would be easy to conclude that many people are going along without much concern for the future. On the other hand, there is some evidence of real worry about the future because of the current recession.

A MACLEAN'S magazine article recently observed: "As Canadians struggle to make ends meet, many economists say that they have detected a more worrisome trend: a fear that debt-ridden governments will no longer be able to fund the expected levels of old-age pensions and health care." Don't worry about getting to the future - we are there.

What specifically can be done by the professionals in this room? We can work for uniformity of pension law across jurisdictions. We can work to resolve conflicts between some provincial pension legislation and the Income Tax Act. We can strive to simplify legislation and regulation particularly for the small business sector. The so called "simplified defined contribution plan" approach is worth pursuing.

We can consult more vigorously with our stakeholders - this should become the normal process for both administration and for any proposed changes to pension laws, regulations and procedures. This includes final resolution of issues such as indexation, surplus and governance. Widely diverging views on these issues have been debated for too many years.

Perhaps most important of all: We can debate various options, then define a course-of-action and implement it.

The need is pressing; we must become evangelical when it comes to encouraging conscientious retirement financial planning - of whatever sort.

As our crystal ball fades, I see a future where we can meet these challenges; we have the talent; we have the skills and we have the resources to create a stable and secure future.

Doing business with the Pension Commission - Post Reorganization

The June 1992 edition of the Bulletin (Volume 3, Issue 1), described the organizational changes adopted by the PCO. These changes were prompted by the feedback from the industry that stressed the need to improve service quality.

Here is a report on how these adjustments have improved our ability to serve clients.

Results to Date:

- **Backlog Reduction:** We are on track for eliminating the backlog by December 1993. In the past seventeen months the backlog has been reduced by 63 per cent;
- As of June 30, 1992, wind-ups (full and partial) are being processed within 120 days. During the last eight months of the year, the Superintendent has approved over 800 wind ups. The total approved for all of 1991 was just 600;
- As of June 30, 1992, the following items are being processed within our target of 30 days from the date on which complete documentation is filed:
 1. Annual Information Returns, Assessment Notices, Auditor's Reports/Financial Statements, Investment Policy Returns, Cost Certificates;
 2. Advice of non-remittance of contributions;
 3. Plan member inquiries and complaints;
 4. Applications to the Commission for refund of member contributions, refund of overpayments and distribution of surplus on plan wind up.
- By December 31, 1992, the following activities are targeted to be processed within 120 days from the date on which complete documentation is filed. Further reductions in this target are planned for the future:
 1. Applications for transfer of assets;
 2. Applications for plan conversions;
 3. Applications for registration of new plans;
 4. Applications for registration of plan amendments, including restated plan documents; and,
 5. Miscellaneous industry submissions.

The Re-engineering Project

The Pension Plans Branch is currently analyzing its flow of work. This encompasses such processes as registrations, filings and applications. The objective is to eliminate duplication of effort and to improve processing times. The project will take approximately a year to complete.

Workload Management System

A Workload Management System will improve the tracking of documents thereby ensuring the achievement of performance targets. The target completion date for the system is March 31, 1993.

In future editions we will keep you apprised of the Commission's progress in improving client service.

Vesting And Locking in On Wind up

When a pension plan winds up, the accrued benefits of all members automatically become fully vested, regardless of their age, service, or length of membership.

The Pension Commission has adopted the position that a member's vested benefit is not automatically locked in on wind up. In adopting this position, the Commission recognizes that there are actually three types of vesting that apply to a member's benefits on the wind up of a pension plan. The locking-in requirements which apply to a member's entitlements depend on the type of vesting which applies to those benefits. It should also be noted that the locking-in requirements may be further affected by the options available to a member and the election made.

The following explanation describes each of the types of vesting and the basic locking-in requirements. This explanation is followed by a review of the options available to a member on wind up and how a member's election may affect the locked-in status of the member's benefits.

- (1) *Statutorily Vested Benefits:* This refers to benefits vested under the 45 & 10 (pre 1987) or 2 year membership (post 1987) rules as of the wind-up date. Such benefits are locked in.

- (2) *Plan Vested Benefits*: This refers to benefits that are not captured by (1) above but which are vested because of a provision of the plan. Such benefits may or may not be locked in by the terms of the plan.
- (3) *73(1)(b) Vesting*: This refers to benefits automatically vested on plan wind up. Benefits vested solely under subsection 73(1)(b) of the Pension Benefits Act are not locked in. The commuted value of the benefit is available to the member in cash.

Growing in to Benefits on Wind up

Members of defined benefit plans whose age plus service equals 55 (Rule of 55) are entitled to elect one of the grow-in options under s.74 of the Act. Members who elect an option under s.74 (rule of 55) of the Act are always locked in, regardless of age, service or membership.

Some plans offer members who meet the rule of 55 additional options apart from the s. 74 enhancements. Vesting and locking-in requirements for these additional options are determined based on the three types of vesting described above: statutory vesting; plan vesting; or s.73(1)(b) vesting.

On wind up, members and former members (who are not already receiving monthly pensions) are entitled, under s.73(2) and s.42 of the Act, to transfer the commuted value of their pensions or purchase an immediate or deferred annuity according to the following options:

- to another pension fund willing to accept the payment;
- to an RRSP;
- a life annuity.

Transfers made under these provisions are locked in, regardless of the locked-in status of the person's benefits.

Members may be entitled to a cash settlement or a variation in terms of payment of certain locked-in benefits under the following circumstances: shortened life expectancy (s.49); if the annual benefit is less than 2% of the YMPE (s.50(1)); and for pre-87 benefits, 25% of the benefit may be released (s.50(2)) if the plan was registered before January 1, 1988. These exceptions are only available if the pension plan specifically provides for them.

These vesting and locking-in rules apply to the basic pension benefit entitlements of members and former members on the wind up of a pension

plan. Surplus distributions to members and former members will be the subject of a future Bulletin.

Self Directed RRSPs and Home Mortgages

The Pension Commission continues to receive calls on a regular basis dealing with the use of locked-in RRSP funds to finance the purchase of a home. The federal government's new homebuyers program which was announced in the spring budget raised the issue of the status of locked-in retirement savings.

In Ontario, locked-in pension funds held in an RRSP cannot be cashed out to buy a house, or used to hold a personal mortgage. Locked-in funds can, however, be held in self-directed RRSPs. Self-directed RRSPs offer a number of investment options not usually available under other RRSPs. Options include Canada Savings Bonds, Bonds, Mutual Funds, Treasury Bills, individual stocks - and home mortgages. And, unlike regular RRSPs, self-directed plans allow investors to take advantage of investments offered at a number of financial institutions.

By definition, self-directed RRSPs require owners to play a greater role in managing the plan - a requirement often suited to more experienced investors. Fees for the administration of self-directed RRSPs also tend to be higher. Annual fees are charged in addition to regular transaction fees. Although these expenses are tax deductible if paid outside the plan, improved investment returns may make these additional costs worthwhile.

Ontario's pension law requires strict adherence in the administration of locked-in funds. Self-directed RRSPs designed to hold a personal mortgage must be administered at arms-length from the homeowner. The mortgage must be insured and set at rates generally available in the open market. If mortgage payments are in default, the administrator of the mortgage may foreclose. In such circumstances, the property can be sold and any outstanding loan amount must be paid back into the locked-in RRSP.

Financial institutions administering locked-in self-directed RRSPs must observe both federal and provincial legislation. Revenue Canada regulates investment options available, such as the percentage of assets which may be invested in foreign property. Ontario requires locked-in funds to be administered according to the Pension Benefits Act.

According to the PBA, financial institutions which allow locked-in funds to be removed from RRSPs are subject to prosecution. On conviction, fines of up to \$100,000 may be levied against a corporation, while individuals are liable to penalties of \$25,000.

Some provinces produce a list of prescribed financial institutions which qualify to administer locked-in funds. Ontario has not adopted this approach but financial institutions are reminded of their obligation to administer locked-in funds according to the requirements of the PBA.

Notices

Revised Checklist for Registration of Pension Plans, Restated Plan Texts and Other Amendments

The Pension Plan Document Checklist is a form designed to assist Administrators in identifying the requirements of the Pension Benefits Act, RSO 1990 (the "Act") and assessing whether documents submitted for registration are in compliance with the Act. The Checklist has been revised to better reflect the fact that the responsibility for compliance rests with the plan Administrator.

The new Pension Plan Document Checklist is designed to assist Administrators in meeting regulatory requirements for restating plan texts, registering new plans, and registering plan amendments. The Pension Commission of Ontario has outlined the revised process for registering pension plans and filing pension plan amendments in a Compliance Assistance Guideline (CAG Number 5 - fall issue 1992).

The CAG provides details on revisions to the Checklist and the new certification of respon-

sibility that must be signed by Administrators. The Guideline will be distributed to sponsors and Administrators along with copies of the new Checklist. Plan registrations, amendments and restated plan texts filed on or after November 1, 1992 must be accompanied by the Checklist. Plan registrations and amendments made before this date will not be affected.

Where pension plans were registered in Ontario prior to January 1, 1988, Administrators must file restated plan texts with the Superintendent of Pensions by December 31, 1992. It is also the responsibility of the Administrator to ensure that pension plans filed for registration on or after January 1, 1988 are in compliance with legislative requirements.

Role of the Administrator Defined

Employers who establish pension plans usually are the plan Administrator. Where the employer is not the appointed Administrator, the Act identifies the person or persons, committees, boards, companies, agencies and commissions eligible to be appointed as Administrator of a pension plan. A pension plan is not in compliance with the Act unless the method and details of the appointment of the Administrator have been defined.

In accepting the appointment, Administrators agree to undertake important duties and responsibilities. Although specific activities of plan administration are often delegated to specialists, the named Administrator is ultimately accountable. Administrators are not relieved of their responsibilities by reason that duties are delegated to and performed by others.

In Ontario, monetary penalties may apply to individuals or corporations who contravene the Act and Regulations. In order to avoid committing offenses, Administrators are obligated to be aware of legislative requirements and regulatory practices.

Responsibilities of the Administrator

Under the Act, the Administrator is responsible for the prudent management of the plan fund, the submission of required filings within specified time limits, the content and accuracy of required reports, payment of required fees, payment of pension entitlements, disclosure of required information and the acceptability of plan documents

for registration. One of the major obligations assumed by the Administrator is to ensure that plan documents, including all amendments*, are acceptable for filing with the Pension Commission.

**Plan amendments are not effective until an application for registration is made in accordance with the Act.*

Information Available to Administrators

The Pension Commission regularly publishes information to assist Administrators in understanding the requirements of the Act and Regulations. The Bulletin and CAGs are designed to ensure that the Commission's policies and practices are communicated regularly to the pension community. These publications also examine current pension issues and invite an exchange of information among industry practitioners.

The *Bulletin* is issued quarterly and CAGs are issued as required. Both publications are mailed to Administrators of registered plans across the province, consultants, actuaries and any individual, association or company who asks to be placed on the mailing list. Employers who are on the mailing list should ensure Administrators have access to published information. Anyone interested in receiving these publications can have their names placed on the mailing list by simply calling 416-314-0700.

The Pension Commission is also preparing a manual of administrative practices and policies which will be updated regularly. Those interested in receiving the manual should complete and mail the business reply-card in the Bulletin's June issue, or call 416-314-0700. The fee for this service will depend on the amount of interest expressed by the pension community. Interested parties are encouraged to respond by November 16, 1992.

Court Surplus Applications Omit PCO

The Pension Commission of Ontario has taken the position that neither the Commission nor the Superintendent are proper parties before the Courts on applications by the employer for declarations relating to surplus entitlement in wound-up plans (Administrative Policy 7a(2)(c)—

November 1991 Bulletin; April 23, 1992 Commission meeting). If they are named, a motion will be brought to remove them from the proceedings, amend the title of the proceedings, and reimburse them for associated costs.

The following statement outlines the PCO's position:

On April 23, 1992 the Pension Commission of Ontario adopted a policy that in any application where the Pension Commission of Ontario or the Superintendent of Pensions is named as party respondents in a court application for a declaration relating to surplus entitlement, counsel on behalf of the Pension Commission of Ontario or the Superintendent of Pensions is to bring a motion to the court for an Order:

- (a) deleting the Pension Commission of Ontario and/or the Superintendent of Pensions as party respondents;
- (b) amending of the title of proceedings in the action to delete the Pension Commission of Ontario and/or the Superintendent of Pensions as party respondents from the title of proceedings;
- (c) for costs of the motion on a solicitor and client basis.

Administrative Practices

Employer Contributions Based on Members' RRSP Contributions

Pension plans and plan amendments which contain provisions that are structured to provide pension benefits based on plan members' RRSP contributions must satisfy the following conditions in order to be acceptable for registration or continued registration:

- 1) The plan must state that all employees of the same class are eligible for membership in the plan;

- 2) plan membership cannot be restricted only to those employees who elect to participate in the RRSP arrangement;
- 3) the plan must provide a minimum benefit for all members of the plan regardless of whether a member elects to contribute to the RRSP arrangement and in addition, must identify the method for determining the minimum base employer contribution;
- 4) the plan must identify the method for determining additional employer contributions with respect to members who elect to contribute to the RRSP arrangement.

Identifying a Successor Pension Plan Under Section 8

Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, the existence of or potential for the establishment of a successor pension plan shall be determined in accordance with the terms and conditions of the purchase and sale document.

The successor pension plan shall be identified under the terms and conditions of the purchase and sale document as a pension plan, already established by the purchaser or as a pension plan promised to be established by the purchaser, under which all affected members of the vendor's plan will be eligible for immediate membership.

Distribution of Surplus to an Employer on Wind-up: Regulation 7a(1)(b)

Regulation 7a(1)(b) provides for payment of surplus to an employer on the wind-up of a pension plan in whole or in part, in accordance with sections 78 and 79 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8 (the "Act").

The regulation requires that written agreement be obtained from the employer, the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, two-

thirds of the members of the plan, and such former members and other persons entitled to payments under the pension plan on the date of wind up as the Commission considers appropriate in the circumstances.

The following sets out the procedures for bringing an application pursuant to regulation 7a(1)(b) on a full wind-up.

General Principles

1. Where payment of surplus to the employer is sought on a wind-up, section 78 of the Act requires the Commission's consent. Before such consent may be given, the requirements of subsections 78(2) and 79(3) of the Act, regarding notice and entitlement to surplus, must be met.

2. Generally, an employer winding up a pension plan will apply to the Commission for its consent to payment of surplus under clause 7a(1)(b) of the Regulation when:

- the Superintendent of Pensions has approved payment of benefit entitlements out of the plan;
- the plan documents permit surplus reversion to the employer on the wind up of the pension plan; and
- the employer has the written agreement of:
 - a) the collective bargaining agent, or if there is no collective bargaining agent, of at least two-thirds of the members; and,
 - b) such number of former members and other persons entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.

Procedure

3. When making application to the Pension Commission, applicants should follow the three-step procedure outlined below:

- send a draft Notice of Application, a draft Surplus Distribution Agreement, and a Preliminary Application to the Superintendent for advice;
- transmit to the parties specified in section 78 (2) of the Act the Notice of Application and Surplus Distribution Agreement; and
- submit the final Application (which includes the finalized Notice of Application and Surplus Distribution Agreement) to the Commission.

STEP 1: SUBMISSION OF DOCUMENTS TO THE SUPERINTENDENT

4. All documents sent for the Superintendent's advice are required to be sent in duplicate to:

The Registrar
Pension Commission of Ontario
9th Floor
101 Bloor Street West
Toronto, Ontario
M7A 2K2

NOTICE OF APPLICATION

5. Regulation 22(2) and (3) require the Superintendent to advise the employer on the adequacy of the Notice of Application. This advice must be obtained prior to transmitting it to members, former members and other beneficiaries of the plan.

6. Consequently, a draft Notice of Application prepared in accordance with subsection 78(2) of the Act and regulation 24(5) must be submitted for the Superintendent's advice, and must be accompanied by a list of the classes of persons who are to receive the Notice of Application, and the proposed form of delivery.

7. Requirements for the content of the Notice of Application prescribed by regulation 24(5) are as follows:

- a) the name of the pension plan and its provincial registration number;
- b) the review date of the report provided with the application and amount of surplus in the pension plan;
- c) the surplus attributable to employee and employer contributions;
- d) the amount of surplus withdrawal requested;
- e) a statement that submissions may be made in writing to the Commission within thirty days of receipt of the Notice;
- f) the contractual authority for surplus reversion; and
- g) notice that copies of the wind-up report filed with the Commission in support of the surplus request are available for review at the offices of the employer and information on how copies of the report may be obtained.

8. If the office or location where the members were employed is closed, the applicant must make alternative arrangements for members to review the documents close to the location(s) where business was conducted.

9. There must be full and open disclosure of all provisions of the plan and prior versions of the plan relevant to any determination of surplus entitlement, including all current and previous plan texts and trust agreements, insurance contracts, employee booklets and notices, etc.

Actual wording of relevant plan provisions, and of relevant plan provisions which authorize any relevant plan amendments, must be cited in the Notice of Application.

10. The Superintendent may require that the Notice of Application contain advice that members, former members and other plan beneficiaries may wish to consult a lawyer prior to giving their written agreement.

11. The Notice must state that:

- written submissions to the Pension Commission are to be directed to the attention of the Registrar; and
- the date on which the application will be considered by the Commission may be obtained from the plan administrator.

SURPLUS DISTRIBUTION AGREEMENT

12. Clause 7a(1)(b) of the Regulation provides that surplus may be paid out of a pension plan to an employer with the written agreement of:

- i) the employer,
- ii) the collective bargaining agent of the members of the plan, or if there is no collective bargaining agent, at least two-thirds of the members of the plan, and
- iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of wind up as the Commission considers appropriate in the circumstances.

In order to obtain the agreements required under clause 7a(1)(b) of the Regulation, the Surplus Distribution Agreement must be given to all persons listed in paragraph 24 below.

13. Preliminary submission of the draft Surplus Distribution Agreement is required to permit the Superintendent to advise the applicant as to its adequacy prior to distribution.

14. The Surplus Distribution Agreement to be signed by plan members, former members, and other plan beneficiaries must include:

- i) the member's name;
- ii) the member's signature;
- iii) the witness' name; and,
- iv) the witness' signature.

15. The appropriate bargaining agent for the purposes of paragraph 7a(1)(b)(ii) is the certified bargaining agent which represents members of the plan at the date the written agreement is signed.

16. The consent of a collective bargaining agent is only relevant for those plan members represented by the agent. Therefore, if a pension plan involves more than one bargaining agent, then each bargaining agent must consent.

17. If a pension plan involves both unionized and non-unionized members, then the bargaining agent as well as two-thirds of those members not represented by the bargaining agent must consent.

18. Even if the bargaining agent does not bargain the pension plan, it must consent to the payment of surplus to the employer.

PRELIMINARY APPLICATION

19. Submission of the Preliminary Application is required to permit the Superintendent to advise the applicant as to its adequacy prior to submission to the Commission.

20. The Preliminary Application should be divided into parts containing the following information:

i) Prepared By

The name of the employer making the application, and the name and title of the corporate officer authorized to act on behalf of the employer in respect of the application. All communication from the Commission will be directed to the person so named. Identify any consultants, actuaries and/or lawyers assisting in preparing the application.

ii) Pension Plan

The full and proper name of the plan and its provincial registration number.

iii) Nature of the Application

A description of the application with reference to the specific sections of the Act and Regulations. For example:

"An application for consent pursuant to subsection 78(1) of the Act and subsection 7a(1)(b) of the Regulation to a payment of surplus to the employer in the amount of ..."

iv) Collective Bargaining Agent

The name of any collective bargaining agent(s) who represent any members or former members of the pension plan.

v) Background

A brief summary of the history of the plan and prior versions of plans, if any, and the events giving rise to the application, including:

- a) the effective date(s) of the plan(s);
- b) classes of members covered by the plan(s);
- c) the benefit structure (e.g. non-contributory, final average earnings benefit);
- d) date of and reasons for the wind up;
- e) a description of any benefit enhancements granted on wind up;
- f) the date the Superintendent approved the wind-up report.

21. The application should set out:

- a) a description of the method used to determine the surplus attributable to employee and employer contributions, and
- b) a statement by the actuary performing the calculation that, in the opinion of the actuary, the method employed is consistent with sound actuarial principles and practices, and is appropriate for the intended purpose.

22. The application should set out relevant corporate history, including reference to any corporate restructuring affecting the pension plan.

STEP 2: TRANSMIT THE NOTICE OF APPLICATION AND SURPLUS DISTRIBUTION AGREEMENT

23. The Notice of Application is required to be transmitted to all parties named in subsection 78(2) of the Act.

24. Normally, service by personal delivery or first class mail of the Notice of Application and the Surplus Distribution Agreement is required for:

- a. active plan members;
- b. anyone defined by the pension plan text as a member or former member;

- c. where the plan wind-up results from an event affecting the employment of the members, such as a plant closure, all members participating in the plan on or after the date notice of the event is released (see: Compliance Assistance Guideline No. 4);
- d. each trade union that represents members of the plan;
- e. any advisory committee established in respect of the pension fund;
- f. former plan members entitled to receive benefits from the plan;
- g. any other persons who are entitled to payments under the pension plan on the date of wind-up. This includes:
 - any former spouse or widow or widower of a member or former member who is receiving payments out of the pension fund, and
 - any dependent child of a former member who is receiving payments out of the pension fund.

In addition, the Superintendent may require that any plan beneficiary, as described in paragraph 25.d., for whom the plan administrator has purchased a pension, deferred pension, or ancillary benefit shortly before the date of wind-up may be entitled to service by personal delivery or first class mail of the Notice of Application and the Surplus Distribution Agreement, and may be required to consent to the application.

25. The following are considered to be "former members" of the pension plan for the purposes of subsection 78(2)(a) of the Act, and are entitled to service of the Notice of Application. However, the Superintendent may authorize alternative service by newspaper advertisement under subsection 112(3) of the Act, subject to approval of the contents of the proposed newspaper advertisement for the following:

- a. former vested plan members who terminated employment within six years before the effective date of wind-up, and commuted or transferred their pension benefit out of the plan;
- b. former non-vested plan members who terminated employment within six years before the effective date of wind-up;
- c. former plan members who had their pension benefits transferred to another pension plan sponsored by the same employer or another employer within six years before the effective date of wind-up;
- d. any plan beneficiary for whom the plan administrator has purchased a pension, deferred pension, or ancillary benefit.

When considered appropriate in the circumstances, the Superintendent may require personal service or other forms of notice for those listed in this paragraph.

26. In an application for surplus distribution where the plan wind up results from an event affecting the employment of the members, such as in the case of a plant closure, all members participating in the plan on or after the date notice of the event is released must be included as members for purposes of the wind up, including the surplus distribution. This applies even if a member terminates after the notice date but prior to the event actually occurring. (see PCO Compliance Assistance Guideline No. 4, Revised Dec. 1990).

27. In order to satisfy Regulation 7a(1)(b)(iii) an applicant employer is required to obtain the written consent of two-thirds of the aggregate of those former members and other plan beneficiaries who are included in paragraph 24. This requirement is subject to the Commission's discretion depending on the circumstances.

STEP 3: FILING THE COMPLETED APPLICATION WITH THE COMMISSION

28. A completed Final Application must be filed with the Registrar at least thirty (30) days prior to the Commission meeting at which the application will be considered.

It is the applicant's responsibility to provide 25 copies of all required documentation with the final Application.

29. The Commission will not normally consider the Application until a period of forty-five (45) days has passed from the date the Notice of Application and the Surplus Distribution Agreement is transmitted to plan members.

30. Copies of all of the Surplus Distribution Agreements signed by plan members, former members, and other plan beneficiaries must be filed with the staff of the Pension Plans Branch of the Commission, not with the Registrar (one signed sample is required to be submitted with the Application).

31. The Final Application is filed with the Commission by sending 25 copies to:

The Registrar
Pension Commission of Ontario
9th Floor
101 Bloor Street West
Toronto, Ontario
M7A 2K2

32. The employer must forward a copy of the Final Application to the plan administrator, if the administrator is a person other than the employer.

33. The applicant's submission regarding plan surplus provisions must trace in the plan documents, trust agreements, insurance company contracts, employee booklets, collective bargaining agreements and any other relevant documents under the current pension plan and any prior pension plans from inception, the provisions that are relevant to any provision for surplus in the plan, whether such provision relate to the employer or employees.

34. Where the original documents contain no surplus provisions, the submission must acknowledge that fact and comment on the validity of any amendments made to address the question.

35. The submission regarding plan surplus provisions must include a description of any actions taken to further clarify any provision for surplus in the plan documents.

36. Any other explanations or submissions, including reference to precedents, if appropriate, relating to any provision for surplus in the plan documents should also be presented.

37. If the submission regarding plan surplus provisions cannot be included in the body of the completed Application, it may be appended to the Final Application.

38. The Final Application submitted to the Commission must contain:

- a) all of the information contained in the Preliminary Application as described in paragraphs 20, 21 and 22;
- b) confirmation that the Notice of Application contains the items prescribed by regulation 24(5), and that the Notice of Application and the Surplus Distribution Agreement were submitted to the Superintendent for advice pursuant to regulation 22(3) prior to transmittal;

c) a statement that subsection 78(2) of the Act has been complied with, the date the last Notice of Application was distributed, and details as to the classes of persons who received the Notice of Application and the Surplus Distribution Agreement.

d) the following documents:

- i) copies of all relevant extracts from the plan documents, trust agreements, insurance contracts, employee booklets notices, and any other documents respecting surplus entitlement, clearly labelled,
- ii) the wind-up report and any supplementary wind-up report,
- iii) the Superintendent's approval of the wind-up report and any supplementary report,
- iv) a certified copy of the Notice of Application and the Surplus Distribution Agreement distributed to plan members, former members and other plan beneficiaries,
- v) the Superintendent's advice regarding the adequacy of the Notice of Application, the Surplus Distribution Agreement, and the Preliminary Application,
- vi) the balance sheet for the plan as of the effective date of wind up, together with any subsequent revision or up-date including:
 - the market value of the assets;
 - the liabilities for the basic benefit entitlements;
 - the liabilities for any other enhancements granted in conjunction with the wind up; and
 - estimates of any other deductions to be made from the surplus, such as fees and expenses.

- e) certified copies of all written agreements between the employer and any collective bargaining agent;
- f) one sample of a Surplus Distribution Agreement signed by a plan member, former member, or other plan beneficiary;
- g) a list of all plan members at date of wind up;

- h) a summary (by class of employee) of:
 - i) the number of members, former members and other plan beneficiaries to whom notice was transmitted;
 - ii) those included in i) who are entitled to payments under the pension plan on the date of wind up; and
 - iii) the number of those included in ii) who signed Surplus Distribution Agreements;
- i) any written representations objecting to the application, as well as a description of the actions taken by the applicant to resolve the objections, and a description of the results of those actions.
- j) any other relevant submissions in support of the application, including any comments on negotiated agreements in respect of the surplus.

39. A supplement to the wind-up report will be required where the Pension Officer reviewing the wind-up report determines omissions or inadequate information.

40. In addition, the applicant should comment on the status of assets and liabilities, asset distribution to the members, former members and other persons entitled to payment, and describe any other actions taken to make provision for the payment of the liabilities.

41. Pursuant to subsection 79(3)(c) of the Act, no money may be paid out of a pension fund to an employer until provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan, including enhancements to members and former members from surplus.

42. For the purpose of resolving any outstanding issues, the Registrar will forward a copy of any objections to the application received which raise legal or technical issues to the applicant.

43. Any applications which have already been prepared so as to satisfy subsection 7a(2)(b) as it read prior to December 18, 1991, will be handled using the same procedures set out in this Administrative Practice.

After Filing the Application

44. The Registrar will acknowledge receipt of the application.

45. PCO staff will review the application and attempt to resolve any outstanding issues with the applicant or anyone who made representations under subsection 78(3) of the Act. When

the staff review has been completed the application will be referred to the Commission for a decision.

Commission Decision

46. The applicant and anyone who made representations under subsection 78(3) of the Act will be advised of the date on which the Commission will consider the matter.

47. Parties are entitled to make written representations to the Commission.

48. Guidelines for contested surplus applications will be published as a separate Administrative Procedure.

After the Commission has made its decision, the Registrar will communicate the Commission's decision to all parties.

Appeals from Commission Decisions

49. Any party to a proceeding before the Commission under section 79 of the Act may appeal to Divisional Court from the Commission's decision pursuant to section 91 of the Act.

Approved by the PCO May 28, 1992. Reprinted with minor revisions to the version issued June 11, 1992.

Procedures for Applications Pursuant to Subsection 7a(2) O.Reg. 743/91

Subsection 7a(2)

Subsection 7a(2) of the Regulation provides that the consent of the Commission pursuant to subsection 78(1) of the Act may be obtained if,

- a) the payment would have been permitted by section 7a of the Regulation as it read immediately before December 18, 1991; and,
- b) notice of proposal to wind up the pension plan was given to the Superintendent before December 18, 1991.

If an applicant is eligible to rely on subsection 7a(2) and chooses to proceed in accordance with paragraph 7a(2)(c) of the Regulation as it read prior to December 18, 1991, the applicant must follow the "Procedure on Applications under Regulation 7a(2)(c)" which was published by the Commission on August 30, 1991.

An applicant employer who satisfies clause 7a(2)(b) may proceed under either the old rules (section 7a of O.Reg. 708/87 (as amended)) or the new rules (section 7a of O.Reg. 743/91).

Circumstances in which the "grandparenting" provision of the new rules, i.e. clause 7a(2)(b) of O. Reg. 743/91, may apply include the following:

1. if notice of proposal to wind up the pension plan was given to the Superintendent of Pensions pursuant to subsection 68(2) of the Act prior to December 18, 1991;
2. if a wind up report was filed with the Superintendent of Pensions prior to December 18, 1991, in cases where the wind up of the pension plan commenced prior to 1988 (when a Notice of Proposal to Wind Up was not required);
3. if a notice of proposal to order the wind up of the pension plan was served by the Superintendent of Pensions prior to December 18, 1991;
4. if there is other written evidence which the Commission considers sufficient notice of a proposal to wind up the pension plan in the circumstances.

Approved by the PCO April 23, 1992.

Your Questions Answered

Q. In Ontario can employers give their employees a contribution holiday if surplus exists in the plan?

A. Yes. Employers can provide a contribution holiday for their employees by amending the plan document. The amendment must indicate that member contributions are suspended for a specified period and will not be deducted at source. In doing so the employer agrees to fund all benefits, for the period indicated, from surplus in the plan.

Q. What is the status of employee contributions between the time they are deducted at the source and the time they are remitted to the plan?

A. Sponsors of contributory plans are required to remit employee contributions to the plan within 30 days following the month in which the deduction was made. Between the time employee contributions are deducted and remitted to the plan, monies are deemed to be held in trust by the employer.

Q. I am 48 years of age and have been with my company for 14 years. If I leave my job this year how will the pre and post 1987 vesting and locking-in rules affect my pension?

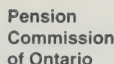
A. The age and service requirements used to determine eligibility for benefits earned before January 1, 1987 are those in place at the time of termination. Therefore, if you terminate your job in 1992, at age 48 with 14 years of service, you are vested and locked-in for benefits earned up to December 31, 1987. You are also vested under the two year membership rule for benefits earned after December 31, 1987.

Q. What authority does the PCO have to charge interest on late AIR filing fees?

A. The authority to charge interest on overdue accounts is provided in Section 9(a) of the Financial Administration Act.

The interest rate to be used is published by the Office of the Treasury, at the Ministry of Treasury and Economics. This rate is reviewed semi-annually and is adjusted as necessary. The interest charged is based on the AIR fees outstanding **exclusive of the 20% late filing penalty** and is calculated on a simple interest basis.

The interest penalty period is from the date the AIR is due (six months after the fiscal year end of the pension plan) to the date of receipt of the AIR filing fees.



Annual Information Return
To be completed by
Pension Plan Administrator

In order to facilitate the processing of a pension plan's Annual Information Return (AIR) it is **important that all of the information requested on the form be provided**. Annotations appear next to the section references on the form to guide Administrators in properly filling out the AIR. Special care in completing this form will avoid lengthy and costly delays caused by incomplete filings.

Name the plan Administrator. All pension plans registered in Ontario must name the plan Administrator. You should refer to the plan documents to ensure the Administrator, as listed in the plan, appears in this box.

1	Provincial Registration Number 000000			
Name and Mailing Address of Pension Plan Administrator (In accordance with Section 8 of PBA, 1987) ABC COMPANY 123 NEW STREET TORONTO, ONTARIO			Name and Mailing Address of Pension Plan Administrator (In accordance with Section 8 of PBA, 1987)	
Telephone (416) 555-0522			Postal Code M5W 2Z2 Fax (416) 555-0523	
Name of Pension Plan ABC COMPANY EMPLOYEES PENSION PLAN			Name of Pension Plan Plan Type <input type="checkbox"/> Defined Benefit <input type="checkbox"/> Multi-Employer Pension Plan <input type="checkbox"/> Defined Contribution <input type="checkbox"/> Other (Specify) _____	
Plan Type Defined Benefit				
3	This form is for reporting period Year Month Day Year Month Day 91/01/01 to 91/12/31		This form is for reporting period Year Month Day Year Month Day / / to / /	
Name of Employer / Plan Sponsor ABC COMPANY			Name of Employer / Plan Sponsor	
Address of Employer / Plan Sponsor 123 NEW STREET TORONTO, ONTARIO			Address of Employer / Plan Sponsor	
Telephone (416) 555-0522			Postal Code M5W 2Z2 Fax (416) 555-0523	
			Telephone () -	
			Fax () -	

03002(09/91)

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Notes:

- Schedules A, B, and C are part of the AIR package. Although not reproduced here, these schedules must be completed and submitted to the Pension Commission with the AIR.
- Schedule A, the Annual Fees Payable form, should be completed and fees calculated based on the membership data recorded in Box 132 of Schedule A. If the AIR is filed late (the deadline is six months after the year end of the plan), the PCO will assess the late filing fees and interest charges and bill the Administrator.
- Schedule B, the Pension Benefits Guarantee Fund (PBGF) Assessment Form, should only be completed by defined benefit pension plans. Part one must be completed by the plan's actuary. If the PBGF Assessment Form is filed later than six months after the plan's year end, the Administrator must calculate and submit the late filing fee.
- Schedule C, the List of Participating Employers, must be completed by single employer plans, and any amendments not yet filed with the PCO should be attached.

<p>4 Name of Corporate Trustee / Insurance Company NEW INSURANCE COMPANY</p> <p>Address of Corporate Trustee / Insurance Company 345 NEW STREET TORONTO, ONTARIO</p> <p>Postal Code M5W 2Z2</p> <p>Telephone (416) 555-2222 Fax (416) 555-2223</p>	<p>Name of Corporate Trustee / Insurance Company</p> <p>Address of Corporate Trustee / Insurance Company</p> <p>Postal Code</p> <p>Telephone () - Fax () -</p>
<p>Name of Corporate Trustee / Insurance Company</p> <p>Address of Corporate Trustee / Insurance Company</p> <p>Postal Code</p> <p>Telephone () - Fax () -</p>	<p>Name of Corporate Trustee / Insurance Company</p> <p>Address of Corporate Trustee / Insurance Company</p> <p>Postal Code</p> <p>Telephone () - Fax () -</p>

Please use additional sheets to complete the list of Corporate Trustee / Insurance Company in the same format as above if there are more than 2.

5 Membership

Number of active members at the end of the previous reporting period	1	<u>100</u>
Number of active members who joined the plan during this reporting period	2	<u>20</u>
(Add boxes 1 and 2)		<u>120</u> > 3 <u>120</u>
Subtract: number of members who ceased to be active members during this reporting period due to:		
Retirement	4	<u>3</u>
Death	5	<u>0</u>
Discontinuance / Reorganization of business	6	<u>0</u>
Other terminations of membership in plan	7	<u>1</u>
(Add boxes 4, 5, 6 and 7)		<u>4</u> > 8 <u>4</u>
Number of active members at plan's reporting period end (Subtract box 8 from box 3)	9	<u>116</u>

In Section 5, **Membership** refers to active members of the pension plan currently making contributions to the pension fund or, for whom contributions are being made.

In Section 5, if the number of members indicated in box #1 is not correct, indicate the correct number and attach a note stating the reasons for the change.

In Section 5, the number in box #9 should equal the total number of members indicated on Schedule A (box 131).

Section 6 satisfies the legislative requirement for Administrators to file a confirmation that the Statement of Investment Policies and Goals (SIP & G) has been reviewed annually, and that no changes have been made. It also identifies plans that are exempt from the filing requirements for SIP & Gs. If the plan is not fully insured, the plan Administrator is required to complete the remainder of this section. The Administrator must also indicate whether the SIP & G has been amended since the last AIR was filed, and the date as applicable.

6 Is the plan completely invested in a fully-insured contract and/or deposit administration general funds contract regulated by the Insurance Act or Canadian & British Insurance Companies Act (Canada)?

☐ Yes
Proceed to Section 7

☒ No
Please continue

You are required to review the Statement of Investment Policies and Goals (SIP & G) at least once each year in order to confirm or amend it.
Have you amended the SIP & G since last AIR filed?

☒ Yes, date last amendment filed with PCO

Year Month Day
91 / 12 / 09

☐ No

7 Contributions for this reporting period:

a) **Employer Required Current Service Cost Contribution**
(calculated in accordance with the latest filed Cost Certificate)

10 \$ 100,000

Less Permitted Employer Credits

11 25,000

Adjusted Current Service Cost Contribution (Subtract box 11 from box 10)

12 75,000

Actual Current Service Cost Contribution paid into the fund

13 75,000

b) **Member Required Current Service Cost Contributions** paid into the fund

14 65,000

Voluntary Member Contribution

15 5,000

Total Member Contributions paid into the fund (Add Boxes 14 and 15)

16 70,000

8 Special Payments made for this reporting period

Employer payments made for: a) going concern unfunded actuarial liabilities

17 \$ 0

b) experience deficiencies

18 0

c) initial unfunded liabilities

19 0

d) solvency deficiencies

20 0

Total Special Payments paid into the fund (Add boxes 17, 18, 19 and 20)

21 0

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In section 8 note that any Special Payments should be in accordance with the last filed Actuarial Report.

In section 7: ALL plans must indicate in Box 10 the figure for employer contributions required.

The total in box 12 must equal Box 10 minus Box 11.

Box 13 must be completed if contributions were remitted.

If Section 12 does not equal section 13 an explanation should be filed with the Return.

9	Name of Individual other than the Pension Plan Administrator/Sponsor who prepared this form <div style="text-align: center; font-size: 1.2em;">Sean Doe</div>					
	Corporate Affiliation <div style="text-align: center; font-size: 1.2em;">Public + Assoc.</div>					
	Address of the Corporation <div style="text-align: center; font-size: 1.2em;">1 Old St. Toronto, On</div>					
	Telephone <div style="font-size: 1.2em;">(416) 123-4567</div>	Postal Code <div style="font-size: 1.2em;">A1B C2D</div>				
		Fax <div style="font-size: 1.2em;">(416) 122-3344</div>				
10	<div style="text-align: center; font-weight: bold;">Declaration of Pension Plan Administrator</div> <p>To the best of my knowledge and belief, I certify that:</p> <ul style="list-style-type: none"> • all the information presented on this form and the attached schedules is true and correct; and • the contributions paid to the pension plan or fund have been at least equal to those required by the Pension Benefits Act, 1987 and Regulation 708/87 (as amended); and • both the pension plan and fund are administered, and the investments are selected in accordance with the Pension Benefits Act, 1987 and Regulation 708/87 (as amended). <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width: 50%;"> Name (Please Print) <div style="font-size: 1.2em;">A. B. Smith</div> </td> <td style="width: 50%;"> Date Year Month Day <div style="font-size: 1.2em;">92 / 06 / 19</div> </td> </tr> <tr> <td> Signature </td> <td> Title / Position <div style="font-size: 1.2em;">President, ABC Company.</div> </td> </tr> </table>		Name (Please Print) <div style="font-size: 1.2em;">A. B. Smith</div>	Date Year Month Day <div style="font-size: 1.2em;">92 / 06 / 19</div>	Signature 	Title / Position <div style="font-size: 1.2em;">President, ABC Company.</div>
Name (Please Print) <div style="font-size: 1.2em;">A. B. Smith</div>	Date Year Month Day <div style="font-size: 1.2em;">92 / 06 / 19</div>					
Signature 	Title / Position <div style="font-size: 1.2em;">President, ABC Company.</div>					

Information provided on this Return may be audited by the Pension Commission of Ontario.

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The Administrator is responsible for the accuracy of the information recorded in the AIR. By signing the AIR, the Administrator acknowledges that the plan is being administered in compliance with the requirements of the Pension Benefits Act, R.S.O. 1990. The Declaration must be signed by the Administrator, or where the Administrator is a corporate entity, by a senior officer of the corporation; or, where the plan is administered by a Board of Trustees, a designated representative of the Board. Unsigned or inappropriately signed AIR's will be returned for signature.

Notes:

1. AIRs are normally mailed to plan Administrators before the new fiscal year begins. Those who do not receive the form are responsible for contacting the Commission early in the new fiscal year to request another be sent. Late filings will be assessed a late filing fee.
2. AIRs must be filed within six months of the plan's year end. Mailings with a postmark date within that period will not be assessed a late filing penalty.
3. Where a plan is winding up, the AIR must be filed within three months of the wind-up date. Late filing fees will apply on late Returns. AIRs for partial years will be assessed at the annual filing fee rates.

Superintendent of Pensions Notices/Orders

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, 1990, [Notice of Proposed Wind-up Order], issued a Notice of Proposal to Make an Order pursuant to section 69 of the PBA, 1990 dated May 22, 1992 for the following pension plan:

- a) Retirement Pension Plan for Unionized Employees of Storwal International Inc. (C-14544)

The Superintendent, pursuant to subsection 89(5) of the PBA, 1990, [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA, 1990 dated August 12, 1992 for the following pension plans:

- a) Pension Plan for Union Employees of the Rexdale Plant of Chromalox Inc. (C-103203)
- b) Pension Plan for Certain Salaried Employees of Chromalox Inc. (C-9302)
- c) Pension Plan for Certain Cambridge Hourly Employees of Chromalox Inc. (C-15362)
- d) Marathon Equipment Ltd. Retirement Plan (C-010933)
- e) The Revised Pension Plan for Employees of J.C. Hallman Manufacturing Company Limited (C-000656)
- f) Staff Pension Plan for Employees of Mandem Inc. (C-041888)

The Superintendent, pursuant to subsection 89(5) of the PBA, 1990, [Notice of Proposed Wind-up Order], issued a Notice of Proposal to Make an Order pursuant to section 69 of the PBA, 1990 dated August 14, 1992 for the following pension plan:

- a) Retirement Plan for the Employees of Orangeville Foundry Ltd. (C-103512)

Orders

The Superintendent issued an Order dated July 28, 1992 pursuant to section 69 of the PBA, 1990 for the following pension plan:

- a) Motor Wheel Corporation of Canada Retirement Plan for Salaried Employees (C-12424)

The Superintendent issued an Order dated July 7, 1992 pursuant to section 69 of the PBA, 1990 [Wind-up Order] for the following pension plan:

- a) Retirement Pension Plan for Unionized Employees of Storwal International Inc. (C-14544)

The Superintendent issued Orders dated August 14, 1992 pursuant to section 69 of the PBA, 1990 [Wind-up Orders] for the following pension plans:

- a) Pension Plan for the Hourly Employees of Usarco Limited (C-15367)
- b) Revised Pension Plan of Usarco Limited for Salaried Employees (C-9777)

The Superintendent issued an Order (published below) dated August 26, 1992, in accordance with the decision of the Commission pursuant to subsection 89(9) of the PBA, 1990, for the following pension plan:

- a) Brewers Retail Pension Plan for Bargaining Unit Employees (C-254)

IN THE MATTER OF THE PENSION BENEFITS ACT, R.S.O. 1990, c. P. 8;

AND IN THE MATTER OF an Order dated August 4, 1992 by the Pension Commission of Ontario under Section 89 of the Pension Benefits Act, that the Superintendent carry out his Revised Notice of Proposal to Make an Order respecting the Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number C-254;

TO: Brewers Retail Inc.
79 St. Clair Avenue East
Toronto, Ontario
M4T 1M6

ATTENTION: Mr. J.R. Davidson, President

Employer and Administrator of
the Brewers Retail Pension Plan
for Bargaining Unit Employees,
Registration Number C-254

ORDER

A REVISED NOTICE OF PROPOSAL TO MAKE AN ORDER requiring Brewers Retail Inc. as administrator of the Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number C-254 to increase the

pension being paid to Mrs. Mary Benson was made by the Superintendent of Pensions, (the "Superintendent"), on March 12, 1992.

A HEARING required by Brewers Retail Inc. by notice dated March 25, 1992, was held by the Pension Commission of Ontario, (the "Commission"), on June 2, 1992, at which time the Pension Commission directed the Superintendent to carry out the Proposed Order contained in the Revised Notice of Proposal to Make an Order.

WRITTEN REASONS were issued by the Commission on August 4, 1992 in this matter.

1. IT IS HEREBY ORDERED THAT, in accordance with the decision of the Commission pursuant to sub-section 89 (9) of the Pension Benefits Act, R.S.O. 1990, C.P.8., (the "Act"), incorporated herein by reference, the Administrator of the Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number C-254, (the "Pension Plan"), increase the pension being paid to Mrs. Mary Benson to sixty percent (60%) of the pension which was being paid to Mr. Harvey Cecil Benson at the time of his death. This adjustment is to be fully retroactive to the date of Mr. Benson's death and formal confirmation in writing is required within thirty (30) days that this adjustment has been made. This adjustment is to include interest from the date of Mr. Benson's death at the rate stipulated in subsection 21(9) of Ontario Regulation 708/87 as amended by Ontario Regulation 589/89 to the Act.

DATED at Toronto, Ontario this 26th day of August, 1992.

"D. Ross Peebles"
Superintendent of Pensions

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario

Commission Meeting Dates, 1992 and 1993

The Pension Commission will convene on the following Thursdays in 1992 and 1993:

September 24, October 22, November 26, December 17, 1992.

January 28, 1993, February 25, March 25, April 29, May 27, June 24, July 29, August 26, September 23, October 28, November 25, December 16, 1993.

PCO Board Members

The following individuals comprise the tribunal:

Joseph Regan, Chairman	Eileen Gillese,
Darcie Beggs	Vice Chair
Donald Collins	David Brown
Monica Townson	Robert Nickerson

Hearings Before the Commission

General Motors of Canada Limited—Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published in the March 1991, Vol.2, Issue 1 edition of the Bulletin. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8—11, 16—18, May 30, 31, August 19, 20, October 23—25, 1991. On May 20, 1992, the hearing was adjourned *sine die*.

Massey Combines Corporation Salaried Pension Plan (C-100879)

A hearing was held May 7, 1992 to review decisions of the Superintendent of Pensions dated November 21, 1991 and December 6, 1991 not to issue an order against Varsity Corporation and Price Waterhouse, the plan administrator. The Reasons for Decision of the Commission are published in this issue. Counsel for the former employees of the pension plan filed an appeal with the Divisional Court but has now abandoned the Appeal. The Commission's Order is in effect.

Brewers Retail Pension Plan for Bargaining Unit Employees (C-254)

A hearing was held June 2, 1992 to review a proposal issued by the Superintendent of Pensions on March 12, 1992 pursuant to subsection 89(2) of the PBA, 1990. The Reasons for Decision of the Commission as well as the Order of the Superintendent of Pensions are published in this Bulletin. Brewers Retail Inc. has appealed to the Divisional Court. As a result the Commission decision is stayed.

Stelco Inc. Retirement Plan for Salaried Employees (C-6968)

A hearing will be held to review a proposal to make an Order that the plan be partially wound-up issued by the Superintendent of Pensions February 28, 1992. A pre-hearing conference was held July 7, 1992 and the decision of the Commission is published in this Bulletin. The prehearing conference will continue November 30 and December 1, 1992. The hearing is scheduled for January 12, 13, 14, 18, 19 and 20, 1993.

Pension Plan for Designated Employees of Tate Access Floors Inc. (C-103686)

The Commission has been requested to review a proposal dated March 31, 1992 by the Superintendent of Pensions to make an Order that the plan be wound-up. This matter has been adjourned sine-die on consent.

Applications Approved Since April, 1992

Applications Approved Under Subsection 7a(2) of Ontario Regulation 743/91 and Subsection 78(1) of the PBA, 1990—Request for Return of Surplus Pursuant to a Court Order

At the Commission meeting held June 25, 1992, the Commission consented to filing with the court a consent pursuant to subsection 78(1) of the PBA, 1990 and subsection 7a(2) of Ontario Regulation 743/91 to the payment of plan surplus.

- (a) **Salaried Employees' Pension Plan of 90550 Ontario Inc. formerly ATF Canada Inc./Linread Division formerly Linread Canada Limited (C-5454)—Application by Accurate Threaded Fasteners Inc.**

Payment of surplus to Accurate Threaded Fasteners Inc. from the Pension Plan for the Salaried Employees' of Linread Canada Limited in the amount of \$15,850.16 as at July 4, 1988 plus investment earnings thereon to the date of payment.

At the Commission meeting held July 23, 1992, the Commission consented to filing with the court a consent pursuant to subsection 78(1) of the PBA, 1990 and subsection 7a(2) of Ontario Regulation 743/91 to the payment of plan surplus.

- (a) **Retirement Plan for Hourly Employees of Sohio Electro-Minerals Company, a Division of QIT-Fer et Titane Inc. (C-1370)—Application by QIT-Fer et Titane Inc.**

Payment of 50% of the surplus, estimated to be \$4,176,000 at the effective date of wind up, remaining after:

- (a) payment of legal fees and disbursements pursuant to the Order of Mr. Justice Wright on April 15, 1991;
- (b) adding investment earnings from the date of plan wind up to the date of payment;

to QIT-Fer et Titane Inc. from the Retirement Plan for Hourly Employees of Sohio Electro-Minerals Company, a Division of QIT-Fer et Titane Inc., Registration Number C-1370, provided that this consent shall not be effective until:

- (a) a letter approving the payment of basic benefits and all payments from surplus to which members, former members and any other persons are entitled as calculated by the wind-up report and the surplus distribution report on which this application is based is signed today by the Superintendent of Pensions;
- (b) the administrator of the pension plan satisfies the Commission that all basic benefits and all payments from surplus to which members, former members and any other persons are entitled to have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Applications Approved Under Clause 7a(1)(b) of Ontario Regulation 743/91 and Subsection 78(1) of the PBA, 1990—Surplus Withdrawal on Wind Up

At the Commission meeting held April 23, 1992, the Commission consented pursuant to subsection 78(1) of the PBA, 1990 and clause 7a(1)(b) of Ontario Regulation 743/91 to the payment of plan surplus.

- a) **The Pension Plan for Designated Employees of Centennial Hosiery Manufacturing Limited (C-16002)**

Payment of surplus to Centennial Hosiery Manufacturing Limited from the Pension Plan for Designated Employees of Centennial Hosiery Manufacturing Limited in the amount of \$74,645 as at December 31, 1989 plus investment earnings thereon to the date of payment.

(b) The Revised Pension Plan for Employees of Davis Controls Limited (C-2482)

Payment of surplus to Davis Controls Limited from the Revised Pension Plan for Employees of Davis Controls Limited (the "Pension Plan") in the amount of \$64,240.75 as at July 31, 1987 plus investment earnings thereon to the date of payment. This consent shall not be effective until:

- (a) The administrator files with the Superintendent an amendment to the Pension Plan allowing for the benefit enhancements of the members, former members and any other persons from the surplus in accordance with the employee notices and surplus sharing agreements and the amendment is accepted for registration by the Superintendent;
- (b) The administrator of the Pension Plan satisfies the Commission that all benefits and other payments, including benefit enhancements contained in the surplus sharing agreements, to which members, former members and any other persons are entitled on the termination of the Pension Plan have been paid, purchased or otherwise provided for to the satisfaction of the Commission; and
- (c) The administrator provides the Commission with written confirmation that the employer's share of the surplus attributable to Quebec members and former members, in the amount of \$2,759.25 as at July 31, 1987 plus investment earnings thereon, has been set aside to be paid out subject to the laws of Quebec.

At the Commission meeting held May 28, 1992, the Commission consented pursuant to subsection 78(1) of the PBA, 1990 and clause 7a(1)(b) of Ontario Regulation 743/91 to the payment of plan surplus.

(a) Pension Plan for Designated Employees of Powerflow Products Limited (C-15567)

Payment of surplus to Powerflow Products Limited from the Pension Plan for Designated Employees of Powerflow Products Limited in the amount of \$184,842 as at August 29, 1990 plus investment earnings thereon to the date of payment.

(b) The Pension Plan for Senior Executive Employees of Chiva Investments Limited (C-16130)

Payment of surplus to Chiva Investments Limited from the Pension Plan for Senior Executive Employees of Chiva Investments Limited in the amount of \$14,449 as at December 31, 1990 plus investment earnings thereon to the date of payment.

At the Commission meeting held June 25, 1992, the Commission consented pursuant to subsection 78(1) of the PBA, 1990 and clause 7a(1)(b) of Ontario Regulation 743/91 to the payment of plan surplus.

(a) Pension Plan for Employees of the Canada Safety Council (C-1096)

Payment of surplus to Canada Safety Council from the Pension Plan for Employees of the Canada Safety Council in the amount of \$537,663 as at March 31, 1992 plus investment earnings thereon to the date of payment, **provided that this consent shall not be effective until** the administrator of the pension plan satisfies the Commission that all benefits and other payments, including benefit enhancements contained in the surplus sharing agreements, to which members, former members and any other persons are entitled on the termination of the pension plan have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

(b) Restated Pension Plan for Salaried and Commissioned Employees of Coro (Canada) Inc. (C-3107)

Payment of surplus to Coro (Canada) Inc. from the Restated Pension Plan for Salaried and Commissioned Employees of Coro (Canada) Inc. in the amount of \$2,003,680 as at March 13, 1992 plus investment earnings thereon to the date of payment, **provided that this consent shall not be effective until** the administrator of the pension plan satisfies the Commission that all benefits

and other payments, including benefit enhancements contained in the surplus sharing agreements, to which members, former members and any other persons are entitled on the termination of the pension plan have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Applications Approved under Subsection 63(7) & (8) of the PBA, 1990—Requests for Return of Member Contributions.

At the Commission meeting held June 25, 1992, the Commission consented pursuant to subsection 63(7) & (8) of the PBA, 1990 to the refund of member required contributions.

(a) Employees Pension Plan of Libman and Company Limited, Libman Manufacturing Limited (C-14121)

Refund of member required contributions from the Employees Pension Plan of Libman and Company Limited, Libman Manufacturing Limited in the amount of \$254,913.07 as at December 1, 1988 plus credited interest thereon to the date of payment.

At the Commission meeting held July 23, 1992, the Commission consented pursuant to subsection 63(7) & (8) of the PBA, 1990 to the refund of member required contributions.

(a) Pension Plan for Employees of Heidt Products Inc. (C-11372)

Refund of member required contributions from the Pension Plan for Employees of Heidt Products Inc., Registration Number C-11372, in the amount of \$47,706 as at September 1, 1988 plus credited interest thereon to the date of payment.

(b) Pension Plan for Employees of Tuboscope Canada Inc. (C-5880)

Refund of member required contributions from the Pension Plan for Employees of Tuboscope Canada Inc., Registration Number C-5880, in the amount of \$291,140 as at January 1, 1991 plus credited interest thereon to the date of payment.

(c) The 1984 Pension Plan for Members of the Academic Staff in the Faculty of Arts and Science of The University of St. Michael's College (C-11290)

Refund of excess member required contributions from The 1984 Pension Plan for Members of the Academic Staff in the Fac-

ulty of Arts and Science of The University of St. Michael's College, Registration Number C-11290, in the amount of \$55,230 as at July 1, 1991 plus credited interest thereon to the date of payment.

(d) Pension Plan for Employees of William Knell and Company Limited (C-7177)

Refund of member required contributions for Class 1 member required contributions from the Pension Plan for Employees of William Knell and Company Limited, Registration Number C-7177, in the amount of \$62,546 as at February 1, 1986 plus credited interest thereon to the date of payment, consent granted in light of the fact that the plan sponsor made special contributions in the aggregate amount of \$62,546 to ensure the funded status of the plan remained the same.

Application Denied: Application under Subsection 63(7) & (8) of the PBA, 1990—Request for Return of Member Contributions

At the Commission meeting held July 23, 1992, the Commission *did not consent* to the application pursuant to subsection 63(7) & (8) of the PBA, 1990 for the refund of member required contributions from the following pension plan.

(a) Pension Plan for Employees of Uddeholm Limited (C-2161)

The Commission **did not consent** to this application pursuant to subsections 63(7) & (8) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 for a refund of members' required contributions for Class 1 members from the Pension Plan for Employees of Uddeholm Limited, Registration Number C-2161, for the following reason:

The application does not satisfy the Commission's policy with respect to the equitable treatment of the individuals within the category (actives) to whom the refund is being made.

***Pension Benefits Guarantee Fund
("PBGF")***

On May 28, 1992, the Commission allocated from the PBGF, to be paid to the Administrator of the under-noted Pension Plan, pursuant to subsection 30(3) of Ontario Regulation 708/87 under

the *Pension Benefits Act* R.S.O. 1990, c. P.8 (the "Regulation"), \$1,105,000 plus interest at the rate of 11.125% per annum calculated from February 29, 1992 to the date of payment for the provision of benefits determined under subsection 30(1) of the Regulation:

- a) **Pension Agreement Between SunarHauserman Ltd. and The United Steel Workers of America, Local 3292 (C-3054)**

On May 28, 1992, the Commission, pursuant to subsection 90(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "Act"), issued a Notice of Proposal to make a Declaration pursuant to sec-

tion 83 of the Act that the PBGF applies to the following pension plan:

- a) **Retirement Pension Plan for Unionized Employees of Storwal International Inc. (C-14544)**

On August 27, 1992, the Commission, pursuant to subsection 90(1) of the Act, issued a Declaration pursuant to section 83 of the Act that the PBGF applies to the following pension plan:

- a) **Retirement Pension Plan for Unionized Employees of Storwal International Inc. (C-14544)**

Commission Decisions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c P.8; (hereinafter referred to as the "Act");

AND IN THE MATTER OF a proposal by the Superintendent of Pensions to make an Order under section 87 of the Act respecting the Brewers Retail Pension Plan for Bargaining Unit Employees, Registration No. C-254;

AND IN THE MATTER of a Hearing requested by Brewers Retail pursuant to section 89 of the Act.

BETWEEN:

Brewers Retail Inc., Applicant

-and-

The Superintendent of Pensions, Respondent

-and-

Mary Benson, Respondent

Before: M. Joseph Regan, Chair; Deborah Hanscom and Robert Nickerson, Board Members.

Appearances: James T. Beamish, counsel to the Applicants, Brewers Retail Inc.

Mary Hendriks and Mark Michaels for the Respondent, Superintendent of Pensions.

Mary Benson on her own behalf.

Date of Hearing: June 2, 1992

Date of Decision: June 2, 1992

Reasons for Decision: August 4, 1992

REASONS FOR DECISION

Nature of the Application

Section 87 of the Act provides that the Superintendent of Pensions has the jurisdiction, based on reasonable and probable grounds, to make Orders requiring the Administrator of a pension plan, or any other person, to take action with respect to a pension plan.

By Revised Notice of Proposal to make an Order dated March 12, 1992 and served on the Applicant Brewers Retail, the Superintendent of Pensions stated:

“NOW THEREFORE TAKE NOTICE that I propose to make an Order pursuant to section 87 of the Act that the administrator increase the pension being paid to Mrs. Mary Benson to sixty per cent (60%) of the pension which was being paid to Mr. Harvey Cecil Benson at the time of his death. This adjustment is to be fully retroactive to the date of Mr. Benson’s death and formal confirmation in writing is required within thirty (30) days that this adjustment has been made. *This adjustment is to include interest from the date of Mr. Benson’s death at the rate stipulated in subsection 21(9) of the Ontario Regulation 708/87 as amended to Ontario Regulation 589/89 to the Act.*”

The Revised Notice of Proposal also sets out the reasons of the Superintendent of Pensions for proposing to make the Order outlined.

By Notice Requiring a Hearing dated March 15, 1992 counsel for Brewers Retail Inc. exercised its statutory right provided in section 89 of the Act to require a hearing before the Pension Commission of Ontario (hereinafter the “Commission”). By Notice of Hearing dated April 28, 1992 all interested parties were notified that a hearing date of June 2, 1992 had been established by the Chair of the Commission. Prior to that date documentary evidence was exchanged by the parties and written submissions were filed with the Commission.

Mr. Harvey Cecil Benson, the deceased employee of Brewers Retail whose pension benefits are at issue in this proceeding, was a member of a union. That union, the Brewers Retail and the United Brewers Warehousing Workers’ Provincial Board (hereinafter the “union”), although served with the Notice of Hearing, did not appear or take any position in the hearing. Mrs. Mary Benson, the widow of Harvey Cecil Benson and the current recipient of the pension benefit in issue, was in attendance at the hearing, but made no submissions.

Factual Background

Harvey Cecil Benson was employed by Brewers Retail Inc. for over 36 years from May 19, 1948 until his retirement on March 1, 1985. Mr. Benson died in 1986 and was survived by his wife, Mary Benson.

During his employment Mr. Benson was a member of the Brewers Retail Pension Plan for Bargaining Unit Employees (hereinafter referred to as the “Pension Plan”). The Pension Plan was first established in 1945. It is a defined benefit plan which provides stipulated benefits to retired members in accordance with their achieved employment level and their years of credited service in the Pension Plan.

In 1974 the Pension Plan was amended to provide for an optional form of benefit called the “Spouse’s Option”. In a document filed at the hearing and identified as Certificate No. 114, dated February 11, 1984 Mr. Benson elected to receive his pension in accordance with the Spouse’s Option. The Certificate reads:

“In accordance with the provisions of the Brewers’ Warehousing Company Limited Pension Plan, I hereby elect the Spouse’s Option Pension Benefit under which I will take a 13% reduction in my pension and upon my death, my spouse will be entitled to 60% of my reduced pension.”

After his retirement in March of 1985 and until his death Mr. Benson received an annual benefit of \$7,529.48 under the Pension Plan. Although 60% of that sum is the amount of \$4,517.69, in accordance with the calculation method employed by Brewers Retail, Mary Benson has only received the annual sum of \$2,155.80.

In March of 1986 Mrs. Benson retained counsel to inquire into the amount of pension benefit she was receiving. Although the evidence is not entirely clear, it appears that staff of the Commission received a complaint from Mrs. Benson concerning the amount of benefit she was receiving in 1989. That complaint led eventually to the Superintendent’s Notice of Proposal to make an Order and to these proceedings.

The Issue and the Law

The question to be decided by the Commission in this hearing is what calculation method is the correct calculation method for the Spouse's Option. That question can only be resolved by construing the provisions of the Pension Plan as they existed in 1984, the year that Mr. Benson made his election.

Counsel for both parties are in agreement that Sections 5 and 13 are the operative provisions in the Pension Plan which deal with the Spouse's Option. Section 5 contains long and irrelevant (for our purposes) payment schedules. Therefore we will set out only the relevant portions of Sections 5 and 13.

"Section 5 Basic Normal Retirement Pension

Each Member who retires on his normal retirement date shall be entitled to receive an annual basic pension on normal retirement date and payable monthly for life, *subject to the provisions of Section 13*, equal to the sum of the amounts determined as follows:

- (a) Future Service Pension (schedules omitted)
- (b) Past Service Pension (schedules omitted)
- (c) Supplemental Pension (schedule omitted)
- (d) Maximum Benefit

Anything herein to the contrary notwithstanding the annual benefit payable under the Plan at retirement, termination of employment, or termination of the Plan, shall not exceed the lesser of the following:

(schedule omitted)

- (e) A member retiring after January 1, 1974 shall have his basic pension benefit accrued at retirement subject to an annual escalation based on the increase in the Consumer Price Index. The adjustment will be made on January 1 each year, based on a 12 month percentage increase as of the prior September 1 to a maximum of 2%. (emphasis added)

Section 13 Death Benefits After Retirement

- (a) Normal Form of Pension
 - (i) In the event of the death of a Member receiving a pension hereunder before the aggregate of the future service pension payments based on credit accrued from July 1, 1963 to December 31, 1973 (including the pension based on his additional voluntary contributions, if any) equals the aggregate required contributions (and additional voluntary contributions, if any) from July 1, 1963 with Accumulated Interest, a death benefit equal to the remaining unpaid balance of such contributions with Accumulated Interest shall be commuted and become payable to the Member's designated beneficiary or legal representative.
 - (ii) In the event of the death of a Member receiving a past service pension hereunder, based on service prior to July 1, 1963, before 120 monthly instalments have been paid, the remaining unpaid instalments will be paid to his designated beneficiary as they become due, except that if a Member has elected an option other than the 120 month guarantee, the death benefits, if any, shall be determined in accordance with the option selected.

(b) Optional Forms of Pension

(i) *Spouse's Option*

In lieu of the normal form of pension (other than a disability pension) a Member may elect to receive a reduced pension during his lifetime and on the Member's death, the Spouse will be entitled to 60% of the Member's reduced pension benefits. If the Member's age and the spouse's age are the same the reduction in the Member's pension will be 10%.

If the Member's age and the spouse's age are not the same, the reduction in the Member's pension will be 10%—(1) reduced by 1/2% for each 12 months that the spouse's age exceeds the Member's age; or (2) increased by 1/2% for each 12 months that the spouse's age is less than the Member's age. (emphasis added)

(ii) Joint and Survivor form of Pension (description omitted)

(iii) Level Income Option (description omitted)

(iv) Further Provisions Relevant to Options

- (1) To become effective, an election of an optional form of benefit must have been made either within six months following the effective date of the Plan or at least one year before the commencement of the Pension provided for hereunder.
- (2) In order to elect a joint and survivor pension option (or to change the contingent annuitant), a Member shall designate his contingent annuitant on a form provided for the purpose and shall furnish to the Employer within 90 days thereafter, but not later than the date on which he shall retire, proof satisfactory to the Employer of the age of the contingent annuitant.
- (3) The election of an optional form of benefit shall become effective at the normal retirement date or upon earlier actual retirement except that a member may revoke his election of an optional form of benefit at any time before it shall become effective.
- (4) If a Member shall have elected a Spouse's Option or a Joint and Survivor Pension option and:
 - (a) If his contingent annuitant shall die before the election becomes effective, the election shall thereupon become void;
 - (b) If a Member shall die before the election becomes effective, the election shall thereupon become void, and the contingent annuitant shall not be entitled to a pension under such option;
 - (c) If the contingent annuitant shall die after the commencement of the joint and survivor pension, but before the death of the retired member, such Member shall continue to receive the pension payable to him in accordance with the option;
 - (d) Upon the death after retirement of the survivor of the Member and the contingent annuitant no contribution refund shall be payable on account of employee contributions.

It can be seen at once that Section 5 sets out 3 funding components which comprise the "Basic Normal Retirement Pension". These are a Future Service pension benefit, a Past Service pension benefit, and a Supplemental pension benefit. It is the latter component which forms the subject of the dispute in this proceeding.

Mr. Benson qualified for this component of his retirement pension because his years of service at Brewers Retail exceeded 30. The evidence indicated that this form of benefit was added to the benefit scheme in 1972. Throughout its submissions, counsel for Brewers Retail referred to the Supplemental pension as a “lifetime” benefit. It is the position of Brewers Retail that in keeping with this “lifetime” characterization of the Supplemental pension benefit, it was not intended to be treated in the same manner as the other two components when calculating the Spouse’s Option. It was not to be reduced during the lifetime of the pensioner, and similarly, it was not to be continued in reduced form as part of the benefit paid to the surviving spouse.

This is, in fact, precisely what happened in this case. Mr. Benson received, from March 1, 1985 until his death in 1986 the entire amount of his supplementary pension benefit. It was not reduced by the agreed 13% set out in his Spouse’s Option election. Similarly, after his death in 1986, the Supplementary pension benefit was entirely ended by the Administrator of the Pension Plan. Mrs. Benson received thereafter 60% of only the first two components of the Normal Basic Retirement Pension.

It is the position of Mrs. Benson and the Superintendent of Pensions that this method of treating the Supplementary pension benefit is not in accordance with the plain wording of Sections 5 and 13 of the Pension Plan. It is their position that Mrs. Benson should have received, since her husband’s death, 60% of the total pension benefit received by him in his lifetime including the Supplemental benefit.

With the greatest respect for the position taken by counsel for Brewers Retail, we are of the view that Sections 5 and 13 of the Pension Plan are clear, unambiguous, and support the position taken by the Superintendent of Pensions and Mrs. Benson.

Section 5 of the Pension Plan states that its provisions are subject to Section 13, which makes provision for benefits after the death of the retiree. The Supplemental component of the Normal Retirement Pension is nowhere described as, or limited to, a lifetime benefit. Those words simply do not exist in the language of the Pension Plan provisions.

Section 13(b)(i) uses the term “reduced pension” to describe what a member will receive during his or her lifetime if the Spouse’s Option is chosen. Those words are nowhere defined in the Pension Plan. Accordingly, we take the view that we must attach an ordinary, grammatical meaning to them. Common usage would suggest that “pension” refers to the entire benefit entitlement. That view accords with the plain language of Section 5 which includes the Supplemental benefit. Therefore, we are of the view that the ordinary meaning of the words “reduced pension” in Section 13(b)(i) must include the Supplementary portion of the pension. We are supported in this construction because we note that Section 13(b)(i) does specifically exclude disability pensions from its purview. Had the Pension Plan intended the benefit to be calculated as urged by counsel for Brewers Retail, then it would have been simple indeed to exclude the Supplementary benefit as well.

Counsel for Brewers Retail raised a number of additional arguments to support the interpretation contended for. However, we are not convinced that they are relevant or persuasive.

The fact that Brewers Retail has implemented an erroneous (in our view) method of calculation for several years cannot be taken as proof that the method was correct. Further, evidence that the Union agreed with that method of calculation does not provide a basis to uphold it. Section 19 of the Act provides in subsection (3):

- 19(3) The Administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with,
- (a) the filed documents in respect of which the Superintendent has issued an acknowledgement of application for registration or a certificate of registration whichever is issued later; and
 - (b) the filed documents in respect of an application for registration of an amendment of the pension plan, if the application complies with this Act and the regulations and the amendment is not void under this Act.

The statutory duty of the Superintendent of Pensions to monitor compliance with the Act, and to insure consistent regulation of pension plans depends upon his ability to Order compliance with the provisions of registered plans. To suggest that the provisions of a registered pension plan could be altered by administrative practices accepted by Brewers Retail and by the Union is simply untenable.

Counsel for Brewers Retail filed documents at the hearing which purported to advise Mr. Benson and Mary Benson of both the method of calculation that would be used to compute their pension entitlement, but also of the exact payments to be received during Mr. Benson's lifetime and after his death. These documents do show that the Supplemental pension was to be unreduced during Mr. Benson's lifetime and nonexistent thereafter as part of the Spouse's Option payments to Mrs. Benson. However, there is nothing whatsoever in the evidence to establish that these documents were actually received by the Bensons. In any event, we are not persuaded that even if they were received, the Bensons would be bound to accept improperly calculated benefits thereafter.

On June 2, 1992, the Commission orally found in favour of the respondents and affirmed the proposed order by the Superintendent of Pensions in the revised Notice of Proposal to make an order dated March 12, 1992.

We are mindful that our ruling will require Brewers Retail Inc. to recalculate the pension entitlement of Mrs. Benson and perhaps others in a similar position. However inconvenient that may be for Brewers Retail, we must fulfil our fiduciary responsibilities to plan beneficiaries to insure they receive benefits to which the Pension Plan provisions clearly entitle them. *Re Collins and Pension Commission of Ontario* (1986) 56 O.R. (2nd) 274.

ORDER

The Commission dismisses the Application brought by Brewers Retail Inc. for an Order reversing the Decision of the Superintendent of Pensions as set out in the Revised Notice of Proposal to Make an Order dated March 12, 1992 and hereby orders the Superintendent of Pensions to carry out the Proposed Order dated March 12, 1992.

DATED AT TORONTO, this 4th Day of August, 1992.

"M. Joseph Regan", Chair
"Deborah K. Hanscom" Member
"Robert F. Nickerson" Member

* * *

Decision

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "Act");

AND IN THE MATTER OF a proposal by the Superintendent of Pensions to make an Order under section 69 of the Act respecting the Stelco Retirement Plan for Salaried Employees, Registration No. C-6968;

AND IN THE MATTER OF a Hearing requested by Stelco Inc. pursuant to section 89 of the Act.
Before: M. Joseph Regan, Chair; M. David R. Brown and Donald G. Collins

Appearances: Harold P. Rolph, counsel to the Pension Commission of Ontario

Mark J. Freiman, Greg Winfield, counsel to Stelco Inc.

Murray Gold, counsel to Harold Dawson, Arthur Frewin, Stanley Stek, Wayne Robinson, Antonia Valeri, Thomas John Wallace and Gene Yachetti—the Stelco Salary Action Committee

Mark Michaels, Paul Dempsey and Martha Milczynski, counsel to the Superintendent of Pensions

Pre-Hearing Conference held July 7, 1992 on the issues of standing and the giving of notice with respect to this proceeding.

Date of Decision: July 27, 1992.

Released August 5, 1992.

This proceeding arises as a result of the Superintendent of Pensions (the "Superintendent"), issuing the following Notice Of Proposal To Make An Order (the "Proposal") dated February 8, 1992 directed to Stelco Inc. ("Stelco") pursuant to Section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "Act"):

IN THE MATTER OF the *PENSION BENEFITS ACT*, R.S.O. 1990, c P.8;

AND IN THE MATTER OF a proposal by the Superintendent of Pensions to make an order under Section 69 of the *Pension Benefits Act* respecting the Stelco Retirement Plan for Salaried Employees Registration No. C-6968;

TO: Stelco Inc. Stelco Tower, P.O. Box 2030, Hamilton, Ontario, L8N 3T1

Attention: Mr. R.J. Milbourne
President, Chief Operating Officer

Employer and Administrator

NOTICE OF PROPOSAL TO MAKE AN ORDER

WHEREAS Stelco Inc. (the "Employer") is the administrator of the Stelco Retirement Plan for Salaried Employees (the "Pension Plan");

AND WHEREAS clause 69(1)(d) and clause 69(1)(e) of the Pension Benefits Act, R.S.O. 1990, c.P.8, (the "Act") provides that the Superintendent by order may require the wind up of a pension plan in whole or in part;

NOW THEREFORE TAKE NOTICE that I propose to make an Order pursuant to section 69 of the Act that the Pension Plan be partially wound up effective April 1, 1990 for those members of the Pension Plan,

- (a) whose employment was terminated on or after April 1, 1990 by the Employer,
 - (b) who voluntarily terminated their employment, on or after April 1, 1990, in conjunction with, or as a result of, any form of incentive, other than the regular early retirement benefit enhancements provided under section 5 of the Pension Plan, offered to them by the Employer,
 - (c) who ceased working prior to April 1, 1990 because their employment was terminated by the Employer and who made use of vacation credits which expired on or after April 1, 1990,
- and,
- (d) who ceased working prior to April 1, 1990 because they voluntarily terminated their employment in conjunction with, or as a result of, any form of incentive, other than the regular early retirement benefit enhancements provided under section 5 of the Pension Plan, offered to them by the Employer, and who made use of vacation credits which expired on or after April 1, 1990.

AND TAKE FURTHER NOTICE that I propose to make an Order that the Pension Plan be partially wound up for the following reasons:

- (a) a significant number of members of the Pension Plan have ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the Employer;
- and,
- (b) all or a significant portion of the business carried on by the Employer at specific locations was discontinued.

AND WHEREAS subsection 89(5) of the Act provides that I may require the administrator to transmit a copy of this notice on such persons or classes of persons or both as I specify in the notice to the administrator;

NOW THEREFORE TAKE NOTICE that the administrator is hereby required to transmit a copy of this notice in accordance with section 112 of the Act to the following persons:

Mr. A. Frewin,
for and on behalf of the Stelco Salary Action Committee,
c/o Mr. Murray Gold
Koskie and Minsky
Barristers & Solicitors
481 University Avenue
Suite 800
Toronto, Ontario
M5G 2E9

Their solicitors herein.

AND TAKE FURTHER NOTICE that subsection 89(6) of the Act provides that the administrator, the employer and any person on who this Notice is served is entitled to a hearing before the Pension Committee of Ontario (the "Commission") if the person delivers to the Commission, within thirty (30) days after service of this Notice, notice in writing requiring a hearing;

AND TAKE FURTHER NOTICE that any notice requiring a hearing should be delivered to:

The Registrar
Pension Commission of Ontario
9th Floor, 101 Bloor Street West
Toronto, Ontario
M7A 2K2

AND TAKE FURTHER NOTICE that subsection 89(7) of the Act provides that if a person on whom this notice is served does not require a hearing in accordance with subsection 89(6), I may carry out the proposal set out in this notice.

DATED at Toronto, Ontario this 28th day of February, 1992.

"D.R. Peebles"
Superintendent of Pensions

Stelco then applied for a hearing before the Commission pursuant to subsection 89(8) of the Act.

The Commission by Notice of Hearing dated June 25, 1992 scheduled a pre-hearing conference for July 7, 1992 to consider submissions with respect to the following issues:

- "1. The persons who should receive notice of this hearing and the manner in which notice is to be given to them.
2. The actions that are to be taken by any party to this hearing with respect to or in relation to the giving of notice to the persons entitled thereto.
3. The status of the Stelco Salary Action Committee, and the members thereof including Mr. Andrew Frewin or any other person represented by the firm of Koskie and Minsky in relation to their participation in this hearing as a party.

Counsel for Stelco, counsel for the Superintendent and Mr. Gold filed written submissions prior to July 7, 1992 which were read and considered by us.

The Status of the Stelco Action Committee and its Members

At the pre-hearing conference held on July 7, 1992, the Commission first heard submissions with respect to the status of the Stelco Action Committee and the members thereof including Mr. A. Frewin as well as that of any other person represented by the firm of Koskie and Minsky to participate in this proceeding as a party. At the pre-hearing conference, Mr. Gold, counsel for the Committee and its members, made it clear that he was not seeking standing for the Committee per se but rather for seven named individuals, Harold Dawson, Arthur Frewin, Stanley Stek, Wayne Robinson, Antonia Valeri, Thomas John Wallace and Gene Yachetti.

At the pre-hearing conference, we made a preliminary oral ruling that we would hear submissions from Mr. Gold with respect to all issues that were scheduled to be addressed that day without making a final decision on the status or standing of his clients to participate in this proceeding.

Since the Action Committee is no longer seeking standing, we shall make no decision on whether it is entitled to standing.

We also are deferring making a final decision on the status and standing of all of Mr. Gold's clients at this time. Since it is clear, however, that some of his clients will be entitled to standing, whatever test we finally adopt, he will continue to receive copies of all notices and correspondence in connection with the hearing and shall be entitled to make submissions with respect to all issues that arise prior to our making a final decision on the status and standing of all his clients.

The Persons who should receive notice of this hearing and the manner in which notice is to be given to them

We next heard submissions with respect to the persons who should be given notice of this hearing which has been required by Stelco pursuant to subsection 89(8) of the Act.

As stated above, this hearing was required by Stelco because the Superintendent had issued the Proposal to require a partial wind-up of the Stelco Retirement Plan for Salaried Employees (the "Plan"). Both counsel for the Superintendent and Mr. Gold took the position that all members and former members of the Plan should receive notice of this hearing. It was their position that the notice should not be restricted simply to those persons who would benefit through the operation of sections 73 and 74 of the Act from a partial wind-up of the Plan. Rather they asserted that notice should be given to all members and former members of the Plan because a partial wind-up order could affect the solvency of the Plan and it is well established that members of a pension plan or other persons who are receiving or who may receive payments from a pension plan have an interest in its solvency. Counsel for the Superintendent in his written submissions also pointed out that only by giving notice to all members and former members of the Plan would the Commission be in a position to determine which persons would be directly and substantially affected by the Commission's decision with respect to the Proposal and as such entitled to standing, at the hearing. The primary authority relied on by both counsel for the Superintendent and Mr. Gold was *Re Collins and Pension Commission of Ontario* (1986) 56 O.R. (-) 274 (Div. Ct.).

Stelco took a much more complex position. Its counsel took the position that only persons who may be directly and adversely affected in a significant way by the proceeding should be given notice. He asserted that persons whose only interest was an interest in the solvency of the Plan, where there was nothing to indicate that the solvency of the Plan was threatened, were not entitled to notice. He made plain, however, that persons who would benefit from a winding-up order should receive notice of the hearing. He further asserted that there was a distinction between an entitlement to notice of the hearing and entitlement to standing as a party. He urged the Commission not to make a decision as to which persons apart from Stelco and the Superintendent should have standing until after the Commission had heard how many of these other persons entitled to notice actually wished standing to participate in the hearing as parties. He also suggested that some persons might only be granted status as interveners.

The Commission made an oral ruling at the pre-hearing conference that all members and former members of the Plan be given notice of the hearing. In making this ruling the Commission made clear that it was not yet determining which of these persons were entitled to standing as parties.

The Commission made this ruling because it did not believe that it had sufficient information to identify with certainty all the classes of persons who were potentially affected in a significant way by the Proposal. Accordingly, the Commission determined the best way to ensure that all persons who could be significantly affected by the Proposal had notice of the proceeding was to give notice to all members and former members of the Plan so that they would be given the opportunity to assert their right to standing if they so choose.

Manner of Giving Notice

After making our oral ruling that all members and former members of the Plan should be given notice of the hearing, we invited submissions with respect to the remaining issue set out in our Notice of Hearing dated June 25, 1992, namely, "The actions that are to be taken by any party to this hearing with respect to or in relation to the giving of notice to the persons entitled thereto."

There was general agreement by Counsel for Stelco, Counsel for the Superintendent and Mr. Gold that the Notice should be published in newspapers where it would likely come to the attention of members and former members of the Plan.

There was sharp disagreement, however, over the question of also mailing the notice of hearing to the members and former members of the Plan. The root of this dispute lies in the fact that neither the Commission nor the Superintendent has a list of the names and addresses of the members and former members of the Plan. At the pre-hearing conference, counsel for Stelco took the position that the Commission was without any statutory authority to require Stelco to provide such a list of such persons and that he had no instructions to advise as to whether Stelco would voluntarily co-operate with and assist the Commission in mailing notices of hearing to a group of persons who may number 7,000 or more.

Following the pre-hearing conference, we received a letter dated July 8, 1992 from counsel for Stelco, the relevant part of which reads as follows:

"At the end of yesterday's proceedings, the panel at the pre-hearing in this matter reserved its decision on what further orders the Commission should make with regard to the issue of how notice is to be given to the parties that it has held are entitled to such notice.

In my submissions on the issue at yesterday's hearing, I informed the panel that I did have instructions with regard to an offer by Stelco Inc. to assist the Commission by itself giving notice to the class of persons who would have been entitled to notice of a partial wind-up pursuant to section 68(3) of the *Pension Benefits Act* but that I did not have similar instructions with regard to the wider class of present and former members of the pension plan in question. I have now reviewed the matter with our client in light of the Commission's decision that it is the wider class that is entitled to notice. While my submissions as to the applicable law and jurisdiction remain as I made them yesterday, I am now able to state that, in order to assist the Commission while at the same time expediting matters and avoiding unnecessary controversy or resort to extraordinary measures, Stelco Inc. is prepared to serve, by first class mail, a copy of a Notice of Pre-hearing in a form acceptable to the Commission on all individuals in the class of persons that the Commission has ruled are entitled to notice.

I trust that this proposal will resolve the issue of delivery of notice to the Commission's satisfaction and I would request that you transmit it to the members of the panel for their consideration and response."

This letter was circulated to Counsel for the Superintendent and Mr. Gold who provided us with written submissions with respect to this proposal by Stelco. Copies of these submissions were sent to counsel for Stelco who responded thereto by letter dated July 16, 1992.

It is our view that the Act does give us the power to obtain the names and addresses of the members and former members of the Plan.

Under section 89(8) of the Act where a person applies for a hearing within the prescribed time limit, the Commission is put under a duty to hold a hearing. Section 89(8) reads:

“Where the person requires a hearing by the Commission in accordance with subsection (6), the Commission *shall* appoint a time for and *hold the hearing*.” [emphasis added]

Section 106 confers on the Superintendent and the Commission certain powers to conduct inspections and secure the production of documents relating to a pension plan or fund. Subsections (1), (2), (3), (4), (5) and (8) of section 106 read as follows:

“(1) The persons referred to in subsections (3) to (5) and (8) to (10) are the following:

1. The Superintendent.
2. *Any person designated by the Superintendent or the Commission.*

(2) The purposes mentioned in subsections (3) to (5) and (10) are the following:

1. *The administration of this Act and the regulations.*
2. The administration of the Guarantee Fund.
3. The enforcement of any section of this Act or the regulations.
4. *The exercise of a power or the carrying out of a duty under this Act or the regulations.*
5. The carrying out of an order made under this Act.

(3) *For a purpose mentioned in subsection (2), a person mentioned in subsection (1) may enter and have access to, through and over any business premises, where the person has reasonable grounds to believe books, papers, documents or things are kept that relate to a pension plan or pension fund.*

(4) A person mentioned in subsection (1) may make examinations, investigations and inquiries and *may require the production of any book, paper, document or thing related to a pension plan or pension fund.*

(5) *A person mentioned in subsection (1) may make, take and remove or require the making, taking and removal of copies or extracts related to an examination, investigation or inquiry for a purpose mentioned in subsection (2).*

(8) A person mentioned in subsection (1) who is making an examination, investigation or inquiry may, upon giving a receipt therefor, remove any books, papers, documents or things relating to the subject-matter of the examination, investigation or inquiry for the purpose of making copies of the books, papers, documents or things, but the copying shall be carried out with reasonable dispatch and the books, papers, documents or things shall be returned forthwith after the copying is completed.” [emphasis added]

The Commission pursuant to section 106(1)(2) is entitled to designate a person to gain access to any business premises where documents or papers relating to a pension plan or pension fund are kept and to make any relevant copies of such papers or documents.

Such an inspection must be for one of the four purposes set out in section 106(2). One such purpose is the carrying out of a duty under the Act. The Commission in holding a hearing under section 89 is carrying out a duty under the Act. The securing of the names of the persons to whom notice of such hearing should be given reasonably and logically relates to the carrying out of this duty to hold a hearing as well as to the Commission's general duty to administer the Act which also is a purpose authorizing such an inspection.

Accordingly, we are of the view that we have the power to designate a person to attend at the premises where the names and addresses of the members and former members of the Plan are kept and to copy the document or documents containing such information so that we may give notice of this Hearing to the persons who may be affected.

In the interest of expediting the hearing, we have decided not to exercise this power at this time if Stelco agrees as follows:

- 1) To mail by first class mail a Notice of Hearing (the "Notice") drafted by the Commission to all members and former members of the Plan within 60 days of the date of this decision. These Notices are to be mailed in envelopes provided by the Commission and are to contain nothing other than a copy of the Notice prepared by the Commission. The Commission expects to be in a position to provide Stelco with copies of its Notice within the next 30 days.
- 2) To compile a list of the names and addresses of the persons to whom the Notice is sent, which list is to be available to the Commission's Registrar (the "Registrar") for inspection at all reasonable times.
- 3) That the mailing of the Notices by Stelco will be under the general supervision of the Registrar and that she shall be granted full access to the Stelco office or offices where the list or lists of members and former members of the Plan are kept so that she may satisfy herself that the Notice has been sent to the members and former members of the Plan. This shall include access to the list of the persons to whom the Notice is sent compiled in accordance with paragraph 2 above.
- 4) To provide the Commission with a statutory declaration deposing that the Notice was mailed to all members and former members of the Plan in accordance with the most up to date records in the possession of the administrator, as well as to the date or dates upon which the Notices were mailed.

If Stelco elects to agree to these terms, we ask that its counsel advise the Registrar in writing of Stelco's agreement within 10 days of the date of this decision.

In his letter of July 16, 1992, counsel for Stelco asked for guidance as to what was meant by the term "former member" in our ruling of July 7, 1992. The Act in section 1 defines this term and this definition should be followed on mailing the notices. For greater certainty, the term would include anyone who could benefit from the operation of sections 73 and 74 of the Act if a partial wind-up is ordered. If there is any doubt about whether a person is covered by the definition, it should be resolved by including the person on the list to be given Notice.

In addition to this mailing of the Commission's Notice by Stelco under the Commission's supervision, given the large number of persons involved the Commission also will exercise its power under section 24 of the *Statutory Powers Procedure Act* and cause the publication of the Notice in several newspapers where it will likely come to the attention of members and former members of the Plan. This will include *The Globe and Mail*, *The Toronto Star*, and *The Hamilton Spectator*. In that regard we would ask that counsel for Stelco advise the Registrar in writing of all the Canadian municipalities where the members and former members of the Plan are or were employed. We also invite counsel for the Superintendent and Mr. Gold to also provide the Registrar with any suggestions that they might have as to appropriate newspapers in which to publish our notice.

DATED at Toronto this 27th day of July, 1992.

"M. Joseph Regan, Chairman"

"Donald G. Collins"

"M. David R. Brown"

* * *

Decision

IN THE MATTER of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (hereinafter referred to as the “Act”);

AND IN THE MATTER of a request to the Superintendent of Pensions by 42 Pensioners of the Massey Combines Corporations Salaried Pension Plan (hereinafter the “MCC Plan”) that certain Orders be issued pursuant to S. 87 of the Act, and the Refusal of the Superintendent to make the said Orders;

AND IN THE MATTER of a Hearing requested by the 42 Pensioners pursuant to S. 89 of the Act.

BETWEEN:

S. ALLAN and the individuals listed
in Schedule “A” hereto.

APPLICANTS

-and-

The Superintendent of Pensions, Price Waterhouse Administrator of the MCC Plan, and Massey Ferguson Industries Limited (hereinafter referred to as “MFIL”)

RESPONDENTS

Before: M. Joseph Regan, Chair; Eileen E. Gillese, Vice Chair; and Board Members Donald Collins, Deborah Hanscom and Darcie Beggs.

Appearances: Mark Zigler for the Applicants

Mark Michaels, Paul Dempsey and Martha Milczynski for the Superintendent of Pensions

John Varley and Pamela Spencer for the Administrator, Price Waterhouse

David J.T. Mungovan, Paul F. Baston and Audrey Mak for Massey Ferguson Industries Limited

Date of the Hearing: May 7, 1992

Date of Decision: June 18, 1992

REASONS FOR DECISION

Nature of the Application

Pursuant to S.87 of the Act, the Superintendent of Pensions has jurisdiction to make Orders, based on reasonable and probable grounds, requiring the administrator of a plan or any other person, to take action with respect to a pension plan.

By letter dated September 27, 1991, counsel for the Applicants, made a formal request to the Superintendent as follows:

“Our Clients request that you as Superintendent issue an Order under Section 88 [now S. 87] of the Pension Benefits Act, 1987, S.O. c. 35 (the Act) requiring the Administrator and Varity to take the appropriate actions in respect of the rights of our clients and restore their full pensions...”

- i) that you issue an Order under Section 88 requiring Varity to make payments under S. 76 [now S. 75 of the Act]; and
- ii) that an Order be made under S. 88 requiring the Administrator to prepare a wind-up report which includes compliance with S. 76 of the Act thus resulting in full pensions to our client; and
- iii) in the alternative, that the Superintendent investigate whether this is an appropriate case for the application of S. 29 of the Prior Act [The Pension Benefits Act, R.S.O. 1980, c. 373] and make the necessary Orders requiring payment of all pensions shortfalls under the MCC Plan by the predecessor plans, including shortfalls applicable to the Pensioners.”

By letter of response to the Applicant's counsel, dated November 21, 1991, the Superintendent declined to make the requested Orders, and by letter dated December 6, 1991 to Mr. Zigler, the Superintendent set out in written form the reasons for his decision. Further, the Superintendent advised that in his view, the Wind-up Report prepared by Price Waterhouse was in order and that the Report would be formally approved.

By letter to the Registrar of the Pension Commission of Ontario (hereinafter the "Commission"), dated December 11, 1991 the Applicants made a formal request for a Hearing before the Commission for the purpose of appealing the Decision of the Superintendent. A panel was formed and the Hearing was held on May 7, 1992. Prior to the Hearing, documentary evidence and written submissions were exchanged between the parties and filed with the Commission. The facts, as set out below, are not in dispute.

Factual Background

The Applicants are 42 individuals who are presently entitled to receive pensions which exceed \$1000 per month from the MCC Plan. Due to the circumstances described below, and in particular the wind-up shortfall in the MCC Plan, the applicants have had their monthly pension benefit above \$1,000 per month reduced in varying amounts.

A. Transfer of the Pension Assets and Liabilities to MCC

All of the applicants were originally employees of MFIL and members of the Massey Ferguson Retirement Income Plan for Salaried Employees (the MF Plan). In the 1970's and early 1980's Massey Ferguson had experienced financial difficulties which resulted in a major restructuring of its Combines and Related Equipment Division which was referred to as "Project Sunshine". Under Project Sunshine, the combines business was transferred to Massey Combines Corporation (hereinafter "MCC") through an Agreement of Purchase and Sale dated November 1, 1985 (the "Agreement").

Under the Agreement, MCC acquired the business assets and liabilities of MFIL which included, *inter alia* the pension liabilities for all individuals described in the definition of "transferred salaried employees" as well as assets to fund those liabilities. That group included the Applicants, who then became members of the new MCC Plan. The agreement included the following provision as part of paragraph 7.16:

"it is therefore understood and agreed that the Vendor [MFIL] *shall not* be obliged to pay or cause to be paid any additional or other amounts to or for the benefits of the trust fund of the Salaried Plan in connection with the Transferred Salaried Persons..." (emphasis added)

The MCC Plan contained benefit provisions which were virtually identical to the MF Plan provisions. As a companion clause to paragraph 7.16 above, the MCC Plan provided in Article 1.04:

"The Plan [the MCC Plan] succeeds the Massey Ferguson Retirement Income Plan for Salaried Employees (the Predecessor Plan) for Employees who were employed by a Participating Company on May 9, 1986...and who participated in the Predecessor Plan immediately prior to the Effective Date. *The Plan assumes liability for the benefits accrued under the Predecessor Plan in respect of such Employees.* The Plan also assumes liability for the benefits accrued under the Predecessor Plan in respect of other Transferred Salaried Persons...*in recognition of the transfer of liabilities from the Predecessor Plan to the Plan, the assets accumulated for these benefits under the Predecessor Plan are to be transferred to the Plan.*" (emphasis added)

It is important to note that Project Sunshine was not, in fact, a purely private transaction. As part of the restructuring negotiations various lenders including the provincial government, the federal government and the Canadian Imperial Bank of Commerce accepted shares in MCC. These other parties carefully scrutinized the actuarial reports which determined the value of assets transferred to MCC to fund the transferred pension liabilities.

The actuarial valuation report of the MF Plan as at October 31, 1985, was prepared on a going concern basis. It showed that on the effective date of transfer the new MCC Plan had an unfunded liability of \$803,981 on a total fund of approximately \$55 million. Another actuarial valuation prepared for

MFIL, but this time on a wind-up basis as at October 31, 1985, showed a small surplus in the fund with respect to transferred salaried employees. In addition, a subsequent actuarial valuation report on the MCC Plan, prepared as at October 31, 1986, showed that the previously existing unfunded liability had been reduced to \$41,863. Thus it appears probable that at the time the assets and liabilities were transferred to the MCC Plan, or shortly thereafter, the plan was fully funded.

Of the 42 individuals who are the Applicants, 23 took employment with MCC and eventually retired from that corporation when it became insolvent. The remaining 19 Applicants retired from MFIL but received their pensions from MCC after November 1, 1985.

On or about June 17, 1986 Massey Ferguson changed its name to Varsity Corporation. The assets which remained in the MF Plan were transferred to the Varsity Plan which remains registered with the Pension Commission of Ontario. On February 1, 1989 MFIL amalgamated with Varsity Corporation. On July 31, 1991 Varsity Corporation amalgamated with a numbered company and the amalgamated company was named Massey Ferguson Industries Limited and is a Respondent in these proceedings.

B. The MCC Wind-up.

Unfortunately, MCC operated for less than 2 years. On March 4, 1988 MCC was placed in Receivership by an Order of the Supreme Court of Ontario and was subsequently petitioned into Bankruptcy. The Superintendent of Pensions appointed Price Waterhouse to be Administrator of the Plan for the purpose of winding it up. Price Waterhouse retained the firm of Eckler Partners to prepare an Actuarial Report (the "Wind-Up Report") on the wind-up of the MCC Plan.

The Report, dated July 10, 1991 (but prepared as at March 4, 1988), shows an unfunded liability in the MCC Plan attributable to Ontario members of approximately \$8.5 million. The Pension Benefits Guarantee Fund (the PBGF) guarantees certain pension benefits, but only up to a total maximum benefit of \$1000 per month. Accordingly, the amount of shortfall that is guaranteed by the PBGF is approximately \$7.5 million. The Applicants are all pensioners who have pension entitlements greater than \$1000 per month. It is this "excess" amount which is not covered by the PBGF and which is therefore subject to loss. In September of 1989, all of the Applicants received a Notice from the Administrator stating that their pensions were going to be reduced by 16% of the amount over \$1000. Counsel for the Applicants filed a Report at the Hearing by Johnson, Higgins, Willis and Faber which estimated that the present value of the pension reductions to these 42 Applicants was approximately \$250,000.

The Issues and the Law

Prior to the hearing, counsel for all parties reached specific agreement with respect to the issues that would be argued before us. That agreement was communicated to the Commission by letter to the Chairman dated April 7, 1992. Argument at the hearing proceeded on the basis of the issues set out in that letter. Our decision and analysis will address those issues.

The First Issue Is the Former Employer (MFIL) liable to the MCC Salaried Plan for that Plan's wind-up shortfall pursuant to Section 75 (formerly section 76) of the Pension Benefits Act, R.S.O. 1990 c. P.8 (the Act)?

The resolution of this issue depends upon the application of principles of statutory construction. In construing the sections of the Act which are relevant to this issue we note the following principle set out in Driedger, *Construction of Statutes*, 2nd ed, at pp 91-92:

"Not only must the whole Act be read, but every provision of the Act should, if possible, be given meaning; hence, if there are rival constructions the general principle is that the construction that gives effect to the whole of the statute, or to the provisions under consideration, would be adopted in preference to one that renders part thereof meaningless."

The provisions of the Act that impact this issue are Section 75 and Section 1. They provide:

Section 75. "(1) Where a pension plan is wound up in whole or in part, *the employer* shall pay into the pension fund,

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- (a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and
 - (b) an amount equal to the amount by which,
 - i) the value of the pension benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act and the regulations if the Commission declares that the Guarantee Fund applies to the pension plan,
 - ii) the value of the pension benefits accrued with respect to employment in Ontario vested under the pension plan, and
 - iii) the value of benefits accrued with respect to employment in Ontario resulting from the application of subsection 39(3) (50 percent rule) and section 74,exceed that value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario.
- (2) *The employer shall pay the moneys due under subsection (1) in the prescribed manner and at the prescribed times.*” (emphasis added)

Section 1. “In this Act,...

“employer”, in relation to a member or a former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives *or received* remuneration to which the pension plan is related, and “employed” and “employment” have a corresponding meaning;” (emphasis added)

Counsel for the Applicants submit that the definition of “employer” in S. 1 of the Act is sufficiently broad to bring Varsity [now MFIL] within the compass of Section 75 and its payment requirements. After all, he submits, the pensioners certainly received remuneration from Varsity [then MFIL]. That being so, he argues, a plain reading of the section would include Varsity as an “employer”.

We are not able to accept the Applicant’s submission on this point. The definition section does set out a broad definition of the term “employer” but that is so because the term is used for a variety of purposes and in different contexts through the Act. In order to appreciate the meaning of the word “employer” in a particular section, the purpose of the clause must be examined.

Section 75 of the Act is directed at ensuring full funding of a pension plan at the actual time of wind-up. The target of the funding obligation is the person or corporation then employing the plan members. Section 75 requires that entity to pay any funding shortfall into the plan. The “employer” for the purpose of Section 75 in this case was MCC, not MFIL or Varsity. In our view, the reference in the definition of “employer” to more than one employer, and to remuneration received in the past or in the present are relevant to the circumstances presented in MultiEmployer Pension Plans, or to the sale of a business where the vendor employer has contributed to a pension plan but the successor employer does not assume responsibility for accrued benefits under the plan.

We are assisted in coming to this conclusion because it is consistent with allowing a meaningful role for Section 80 in the Act. That section is specifically directed toward apportioning responsibility during corporate change. Section 80(1) and (2) deals with liability for pension benefits where there is a sale, transfer or the establishment of a new pension plan. In our view, this is the operative section to deal with whether or not Varsity or MFIL might have residual liability for a shortfall in the MCC plan, not S. 75.

Section 80(2) specifically excludes any continuing obligation for benefit funding on a former employer where a successor employer “assumes responsibility for the accrued pension benefits of the employer’s pension plan and the pension plan of the successor employer shall be deemed to be a continuation of the employer’s plan with respect to any benefits or assets transferred.” In our view Section 80 clearly recognizes the ability of an employer to transfer liability to a successor employer on sale or transfer. This section would be in direct conflict with section 75 if the Applicant’s interpretation was accepted.

In addition, the result of the Applicant's position would be to impose perpetual contingent liability on any employer who contributes to a pension plan. This is particularly untenable where a fund has been transferred, as in the present case, and the prior employer (Varity or MFIL) has no control over the investment of the assets or the imposition of new liabilities.

We note that Section 80(5) of the Act imposes on the Superintendent of Pensions the obligation to review the transfer of assets where a change in employer liability is proposed, and to refuse to consent to such transfer where the benefits of plan members and former members are not protected. This provision was not in place on November 1, 1985. However, we are satisfied that in this particular case, the value of the assets transferred to the MCC Plan was carefully examined by various interested parties, including the provincial and federal government.

Finally, counsel for the Superintendent pressed a number of examples which show the grave inconsistencies and difficulties that would be raised with respect to other sections of the Act should the Applicant's submissions on the content of the word "employer" be accepted. For example, the use of his interpretation in Sections 78 and 79 of the Act would mean that if the MCC Plan had wound up with surplus, then as an "employer", Varity or MFIL could have applied for a reversion of surplus to it. That is obviously an absurd result, and precisely the sort of inconsistency that the tenet of statutory construction quoted above from Driedger seeks to avoid.

Finding on the First Issue

We find that the Superintendent was correct in declining to make the requested Order under S. 87 of the Act. Specifically, in the circumstances of this case, we find that neither Varity nor MFIL come within the definition of "employer" as that word is used in Section 75 of the Act.

The Second Issue Is the Former Employer (or its salaried plan, Registration No. C-8028) liable to the MCC Salaried Plan pursuant to s. 29 of the Pension Benefits Act, R.S.O. 1980, c. 373 (the Prior Act) for that portion of the wind-up shortfall attributable to service accrued while it was the employer?

At the date of the MCC wind-up, March 4, 1988, the Prior Act was the governing legislation. Section 29 of that Act was as follows:

29. (1) Where an employer who is bound by or is a party to a pension plan sells, assigns or otherwise disposes of all or part of his business or undertaking or all or part of the assets of his business or undertaking, and,
- (a) in conjunction therewith, an employee of the employer becomes an employee of the person acquiring such business, undertaking or assets, in this section called the successor employer; and
 - (b) the successor employer *does not assume* responsibility for the accrued pension benefits of the employer's pension plan,

the employee referred to in clause (a) *continues to be entitled to the benefits* provided under the terms of the plan in respect of his service in Ontario or a designated province without further accrual (emphasis added)

- (2) Where a transaction described in subsection (1) has taken place, irrespective of whether the successor employer has or has not assumed responsibility for the accrued pension benefits of the employer's pension plan, for the purposes of the employer's plan, the employment or membership in the employer's plan of an employee referred to in clause (1)(a) shall be deemed not to have been terminated by reason of the transaction.
- (3) Where a transaction described in subsection (1) has taken place, irrespective of whether the successor employer has or has not assumed responsibility for the accrued pension benefits of the employer's pension plan, for the purpose of,

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- (a) determining whether an employee is entitled to a deferred life annuity under a pension plan of the employer or successor employer; or
 - (b) determining completed service with respect to any eligibility condition of a successor employer's pension plan,

the service of the employee shall be deemed to include his service with both the employer and the successor employer without any break in service notwithstanding the change of employers referred to in clause (1)(a).

Counsel for the Applicants prefaced his argument with respect to S. 29 of the Prior Act by asking the rhetorical question: "What protection is there under the Pension Benefits Act for those who work for an employer, the business is sold, and the new employer becomes insolvent?" It was submitted that the panel should keep that question in mind when approaching the task of statutory interpretation, and to construe the Prior Act so as to provide necessary protection. Although we are mindful of the unfortunate consequences which flow from an underfunded plan on wind-up, we must fairly apply and construe the Act so as to reflect the intention of the legislature and nothing more.

Section 29(1) of the Prior Act specifically addressed a situation where an employer disposed of all or part of the business and the successor employer does not assume responsibility for benefits. The section, in that circumstance, imposes continued liability on the former employer for all benefits earned without further accrual. Presumably, in accordance with basic principles of statutory construction, the converse would also be true, that is, where the successor employer does assume responsibility for benefits, the predecessor is exonerated from further liability. This subsection deals with responsibility for benefits on the sale or transfer of a business. It occupies the field. No other statutory section is needed, and any other subsection which purported to deal with this aspect of pension regulation would be redundant.

Counsel for the Applicants takes the position that S. 29(1) does not apply because in the case before us, MCC did assume responsibility for the pension benefits of the transferred salaried employees. He then submits that the words in Subsection 29(2) which state "the employment or membership in the employer's plan of an employee referred to in clause (1)(a) shall be deemed not to have been terminated by reason of the transaction..." are such as to attach ongoing liability to MFIL or Varity for the pension benefits of the Applicants.

We cannot accept that proposition.

Subsections 29(2) and (3) are directed to all cases whether or not a successor employer has assumed liability for benefits. A plain reading of these sections, coming as they do directly after subsection (1) which deals with liability for benefits, demonstrates that they are for the purpose of insuring continuity of membership for the purpose of service and vesting calculation. These subsections negative a deemed termination which would otherwise take place and deprive employees of earned service.

In addition, we are not persuaded that the legislature would have intended such a draconian result as that advanced by the Applicants without very clear language to that effect. To impose the ongoing liability advocated, despite clear contractual agreement to the contrary, would put employers in the position of guarantor. Responsibility for benefits might be retroactively imposed where the liabilities arose due to later events over which the former employer had no control. As a matter of fact, it was the submission of counsel for the Administrator that the shortfall in the MCC plan arose largely, if not entirely, due to subsequent events beyond the control of Varity or MFIL.

Finally, we note that the PBGF was created on December 4, 1980. Although the stated government purpose of the fund was not proved before us, it seems likely that the fund was created as a protection for employees because no such guarantee of benefits existed by statute. The government, through the PBGF, became the guarantor with ongoing liability up to a maximum of \$1000 per month.

Finding with respect to The Second Issue

We find that the Superintendent of Pensions was correct when he came to the conclusion that there was no basis under S. 29 of the Prior Act to find that the membership of the Applicants under the MF Plan continued for the purpose of benefit entitlement. Accordingly, we find no liability on the part of Varsity or MFIL under S. 29 of the Prior Act.

Issues Three and Four

These two matters relate to costs and revisions to the July 10, 1991 Wind-up Report. Both were contingent on a finding of liability under either the First or the Second Issue. In light of our decision with respect to those issues, neither of these matters arise.

Order

The Commission dismisses the Application for an Order reversing the Decision of the Superintendent of Pensions in his letters to the Applicants dated November 21, 1991 and December 6, 1991.

DATED at Toronto this 18th day of June, 1992.

"M. Joseph Regan, Chair"
"Donald Collins", Member
"Eileen Gillese", Vice-Chair
"Deborah Hanscom", Member
"Darcie Beggs", Member

* * *

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Policy Issues	Susan Ellis Cynthia James	314-0703 314-0702
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Trade, Commercial, Public Administration	Larry Falconer	314-0610	Doug Kaye 314- 0605
Food, Beverages, Textiles, Paper...	Jaan Pringi	314-0586	John Staric 314- 0596
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Electrical, Non-Metallic, Chemicals...	David Kearney	314-0590	Natasha Vandenhoven 314- 0598

2. ALPHABETICAL ALLOCATIONS – Defined Benefit & Multi-Employer Plans (Plans with less than 250 members)

Alpha Range	Pension Officer	Alternate	
A -BRI	David Allan	314-0612	Elizabeth Addo 314- 0607
BRO -COM	Steve Young	314-0646	Brigitte Khan 314- 0640
CON -EZZ	Jules Huot	314-0613	Claude De Souza 314- 0608
F -HAZ	Larry Murray	314-0644	Merle Corbie 314- 0637
HEA -KMZ	William Qualtrough	314-0641	Lynn Barron 314- 0639
KNA -MOQ	Elizabeth Carter	314-0604	Wynnell De Landro 314- 0603
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POL -SHE	Maureen Barber	314-0645	Debra Bain 314- 0638
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*Companies with numeric-alphabetical names.

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Canadian-COK		Margaret Fennell	314-0600	Daphne Ludgate	314- 0592
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HAM	-JAL	Brigitte Khan	314-0640	John Graham	314- 0647
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VUM	-*	Mark Eagles	314-0599	Larry Martello	314- 0587

4. ALPHABETICAL ALLOCATIONS – Pension Plans of Insolvent Companies

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*Companies with numeric-alphabetical names.

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The material in this issue of the Bulletin has been prepared by the PCO to provide general information. The information contained here should not be construed as legal advice. The Pension Benefits Act, RSO 1990 c.P8, the Regulation (as amended), terms of a pension plan, and the policies and practices of the PCO, as they may be from time to time, should be considered to determine specific legal and legislative requirements.

THE PENSION COMMISSION OF ONTARIO BULLETIN

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Ontario



LIF - Another Option for Retirement Planning

SOME OF THE INFORMATION contained in this article is subject to amendments to the Regulations under the Income Tax Act (Canada) which were proposed by the Minister of Finance in the February, 1992 federal budget.

In October 1992, the Minister of Financial Institutions, the Hon. Brian Charlton, introduced Regulation 564/92 under the Pension Benefits Act (the Act) to provide for the Life Income Fund (LIF) as a prescribed retirement savings arrangement. The new LIF will allow former members of pension plans to transfer the value of their benefit to a LIF if certain conditions are met.

Why Ontario introduced the LIF option

The Ontario LIF was established in response to demands from pension plan members for a more flexible alternative to the life annuity.

Prior to the introduction of the LIF, individuals with locked-in pension monies were required to purchase an annuity in order to begin receiving retirement income. In cases where locked-in funds had already been transferred to an RRSP, individuals were required to annuitize at age 71 without regard to whether retirement income was needed at that time. As a result, many individuals objected to the loss of continued capital growth

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from investment earnings and expressed a desire for a more flexible arrangement for tax and income planning purposes.

As an alternative income producing arrangement, LIFs provide increased flexibility by enabling individuals to defer the purchase of an annuity to the end of the year in which they turn 80 years of age. While in the LIF, locked-in monies provide an adjustable flow of retirement income within a specified range of minimum or maximum withdrawals. At the same time, control over the balance of the locked-in capital and its investment is retained by the purchaser, and investment earnings continue to accrue on a tax-sheltered basis.

What is the Ontario LIF?

In literal terms, the Ontario LIF is an arrangement between a carrier (a person who is authorized to sell the Ontario LIF) and an individual (the LIF planholder) who has money that originated in a pension plan which is locked in by pension legislation.

Is the Ontario LIF the same as a RRIF?

Individuals who accumulate tax-sheltered retirement savings which is not locked in under pension legislation have a similar arrangement available to them in the form of a Registered Retirement Income Fund (RRIF).

Many of the rules that apply to the administration of a RRIF also apply to the LIF. For example, eligible investments and the minimum withdrawal formula.

The most marked difference between the RRIF and LIF is that locked-in pension monies cannot be used to purchase a RRIF. This is because RRIF contracts do not contain a maximum withdrawal restriction. In order to comply with Ontario's pension legislation, the LIF imposes measures to ensure that sufficient capital is retained in the plan for the eventual purchase of a life annuity.

Who can sell a LIF?

The LIF may be sold by any person who is authorized to sell a RRIF and is willing to comply with the LIF requirements. In addition to insurance companies, financial institutions such as banks, trust companies and credit unions are eligible to

offer the LIF. Certain securities dealers who are eligible to sell a RRIF may also sell the Ontario LIF.

Who can purchase an Ontario LIF?

Under the Ontario Regulation a LIF may be purchased by any former member of a pension plan who is entitled to a portability option and, upon terminating employment or plan membership in Ontario, meets the LIF age and spousal consent requirements. These conditions also apply to former plan members who have transferred the value of their benefit to a locked-in RRSP and now wish to choose the LIF option. It should be noted that members of pension plans regulated under the federal Pension Benefits Standards Act (PBSA) are not eligible to purchase the Ontario LIF.

Under section 18 of the Regulation (564/92), the LIF is automatically an option under the transfer provisions of ongoing pension plans registered in Ontario as of September 18, 1992.

Although the Ontario Regulation is now in place, the Regulation under the Income Tax Act (ITA) will only permit direct transfers from a pension plan to a LIF if the plan submits amendments to Revenue Canada which specifically provide for either the LIF or a retirement savings arrangement option. If the pension plan documents are not amended to permit a direct transfer to a LIF, the members of the plan must first make a transfer to a locked-in RRSP. The funds in the locked-in RRSP can then be used to purchase a LIF.

Technically, the LIF is an option for individuals who are between the ages of 54 and 79. According to the Regulation individuals must be within ten years of their normal retirement date (under the pension plan), and must begin receiving payments from the LIF no later than the fund's second anniversary.

Spouses and former spouses of plan members who are entitled to a pension benefit (under a court order or separation agreement) may purchase an Ontario LIF if that option is available to the plan member. However, the spouse must meet the LIF age requirements.

(The age 55 requirement prescribed under the LIF Regulation is consistent with conditions for annuity contracts purchased with locked-in funds. The requirement to commence payments in the second year after purchase is a condition under the ITA that also applies to RRIFs.)

Commutation of annuities permitted for the purchase of a LIF

Under the new Regulation annuities purchased with locked-in funds may be commuted to purchase a LIF if both parties to the annuity contract agree. This provision is applicable to a single or a joint life annuity with or without a guarantee period. In the case of a joint life annuity, a spouse who is in receipt of a lifetime survivor benefit may also commute the annuity to purchase a LIF, if the LIF age requirements are met.

Issuers of annuities who agree to transfer funds to a LIF are obligated to identify the commuted value of the annuity, and the amount that will be available for the LIF purchase. The difference between the two amounts, if any, is the charge applied to effect the transfer.

Beneficiaries (including spouses) who are entitled to payments for the unexpired term of a guarantee period may commute any remaining payments for cash. This option is available if the issuer of the annuity consents.

Flexible withdrawal limits

Under the LIF arrangement, the fiscal year is designed to end December 31 and may not exceed a twelve month period. Carriers are required to calculate withdrawal amounts for each new fiscal year as of January 1st of that year. Planholders are entitled to receive this information from their carrier at the beginning of each year.

Yearly withdrawals from the LIF are designed to fall within a minimum and maximum range. The minimum withdrawal formula in the LIF is based on the formula currently used for RRIFs. However, the federal Minister of Finance will be revising the minimum formula for RRIFs purchased on and after January 1, 1993. Ontario is considering amendments to reflect the new Income Tax Act formula for LIFs purchased in 1993.

Effective January 1, 1993, the annual minimum withdrawal amounts under the ITA for individuals age 71 to 77 will be higher than the withdrawal limits under the existing Ontario formula. Annual minimum withdrawal amounts for individuals 79 and 80 years of age are less than those calculated under the Ontario formula.

Ontario LIFs purchased in 1992 can continue to pay out minimum withdrawal amounts calculated under the old formula as long as no additional funds are added to the LIF after 1992.

Minimum withdrawal formula

The existing minimum withdrawal formula (which applies to plans opened before January 1, 1993) is calculated by dividing the balance in the LIF at January 1 of each fiscal year by 90, less the planholder's age on the same date.

The planholder's age must be used as the basis for the withdrawal calculation. (Under RRIF rules a joint annuitant may be named. This allows for the calculation of the minimum withdrawal formula based on the spouse's age. This option is not available under the Ontario LIF.)

In the initial year of the LIF the minimum withdrawal amount is zero. Provided the purchaser is 55 years of age or older, the LIF Regulation permits withdrawals up to the maximum defined by the fund.

The planholder must begin receiving annual payments at least equal to the minimum before the end of the second year. If the planholder does not initiate the withdrawal, the carrier must make the payment to the planholder.

Maximum withdrawal formula

The Regulation under the Pension Benefits Act permits cash withdrawals up to the maximum during the initial fiscal year of a LIF, provided that the planholder is 55 years of age, and the transfer has not been made from another LIF. (In the initial year of the fund the maximum is prorated based on the number of months the fund has been in existence.) Where all or part of the assets used to purchase a LIF have been transferred from another LIF, no funds may be withdrawn in the initial fiscal year (maximum amount is zero).

The maximum withdrawal formula is designed to ensure that sufficient money remains in the LIF to purchase a life annuity at age 80.

The interest rate used in calculating the maximum annual withdrawal may be determined using one of the following two methods:

- 1) By using an interest rate not to exceed six per cent for all years; or,
- 2) By using an interest rate that is not higher than the prescribed rate (published in the Bank of Canada Review under identification number CANSIM B-14013) for the first fifteen years and a rate that does not exceed six per cent for the remaining years.

The interest rate chosen will ultimately affect the balance in the fund that is available for the purchase of a life annuity. For example, use of a lower interest rate results in a lower maximum annual withdrawal amount. As a consequence, the balance available to purchase an annuity at age 80 may be higher.

The December CANSIM rate specified by Regulation 564/92 may not be available at the beginning of each fiscal year of the plan. Ontario is reviewing a more feasible requirement. The Regulation will be revised to reflect any decision made regarding the requirement to use a CANSIM rate for the month before the first month in the fiscal year.

Transfer options under the LIF

Regulation 564/92 allows LIF planholders to transfer any or all of the assets of the LIF to another LIF, or purchase an immediate life annuity. Individuals may also transfer the assets to a locked-in RRSP, but must do so before the end of the year in which they turn 71 years of age.

The annual minimum withdrawal requirement restricts transfers to prescribed retirement savings arrangements to an amount in excess of the prescribed minimum (which must be paid out yearly). Maximum withdrawal limits do not apply to amounts which may be transferred from a LIF to one of the other prescribed arrangements.

Spousal entitlements

If the planholder dies before a life annuity has been purchased, the planholder's spouse or, if there is none, another named beneficiary, or if there is none, the estate, is entitled to receive a benefit equal to the balance in the fund.

A spouse living separate and apart from the planholder is entitled to make a claim against LIF assets as part of the division of marital property. However, spouses living apart from the planholder on the date of the purchaser's death are not entitled to a death benefit.

Spouses have the option to waive their right to survivor's benefits. These benefits may be reinstated by the spouse if the waiver is revoked prior to the purchase of an immediate life annuity. In this situation, a joint and survivor annuity must be purchased.

Information that must be provided by the carrier

Section 3 of the Regulation requires that the LIF plan document provide for all of the matters described in Schedule 1 (as per section 2(1) of Schedule 1).

A number of the eleven sections which comprise Schedule 1 are discussed throughout this article. Other requirements described in the schedule include: a description of the purchaser's powers (if any) regarding the investment of fund assets, the method of determining the value of the fund upon the death of the planholder, and the fiscal year the fund must end.

While all sections of Schedule 1 must be included in the LIF plan document, carriers are also specifically referred to their obligation to include terms of any fund transfers necessary for establishing the LIF (section 6(2)), the terms for amending the arrangement (section 10), and a description of information regarding fund activity based on section 11.

If the planholder dies before a life annuity is purchased, the carrier must provide the beneficiary with information on the sums deposited, accumulated earnings, payments made out of the fund, fees charged against it during the previous fiscal year, and the balance in the fund at the beginning of the fiscal year.

Responsibility of carriers

Carriers are reminded of their responsibility to administer the Ontario LIF in accordance with the requirements of the Pension Benefits Act (the Act) R.S.O 1990, c. P.8, Regulations, and published Commission policies governing locked-in funds. Locked-in monies may only be transferred for the purchase of a LIF, a locked-in RRSP, or an annuity as prescribed. No variation in the payment for LIFs is permitted.

Under Regulation 564/92, carriers that offer the LIF are not required to obtain the approval of, or register the documents with, the Pension Commission of Ontario. Revenue Canada does, however, require LIF/RRIF documents to be filed. It should be noted that LIFs must meet the requirements of the Income Tax Act (Canada) and be amended to do so as necessary.

The specimen Retirement Income Fund (RIF) document, registered with Revenue Canada (Taxation) as an arrangement eligible to accept monies that are locked-in pursuant to the Act, should reflect the provisions identified in Schedule 1 of Regulation 564/92.

(Continued on page 7)

Minimum Withdrawal Formula

$$\frac{\text{Amount in LIF at start of year}}{90 - \text{Purchaser's age at start of year}} = \text{Minimum dollar withdrawal in year}$$

This formula reflects percentages used under the “old” pre-1993 rules. Reference Table 1: “Minimum withdrawal as a percentage of the LIF balance at the start of the year”.

In the “Minimum withdrawal as a percentage of the LIF balance at the start of the year” columns, the rates are identified as “old” and “new”. These columns show applicable rates for LIFs set up before 1993, and lists the new percentages under the Income Tax Act which must be used for LIFs set up after 1992.

The table below shows the minimum percentage of the LIF balance (at the start of the year) which must be withdrawn annually. The minimum withdrawal rates expressed as a percentage of the LIF balance (as per the table) are fixed. The dollar amount of the withdrawal must be calculated yearly based on this fixed percentage.

Table 1

Age at Start of Year	New Age During Year	Years to end of age 90	Minimum Withdrawal as a Percentage of the LIF Balance at the start of the year	
			(Old)	(New)
54	55	36	0.00%	(same as “old” to age 70)
55	56	35	2.86%	
56	57	34	2.94%	
57	58	33	3.03%	
58	59	32	3.13%	
59	60	31	3.23%	
*60	61	30	3.33%	
61	62	29	3.45%	
62	63	28	3.57%	
63	64	27	3.70%	
64	65	26	3.85%	7.38% 7.48% 7.59% 7.71% 7.85% 7.99% 8.15% 8.33% 8.53%
65	66	25	4.00%	
66	67	24	4.17%	
67	68	23	4.35%	
68	69	22	4.55%	
69	70	21	4.76%	
70	71	20	5.00%	
71	72	19	5.26%	
72	73	18	5.56%	
73	74	17	5.88%	
74	75	16	6.25%	
75	76	15	6.67%	
76	77	14	7.14%	
77	78	13	7.69%	
78	79	12	8.33%	
79	80	11	9.09%	

Note: Individuals who purchased the LIF before 1993 may use either the old or the new percentages, between the ages of 71 and 77. At age 78, the “new” percentage must be used.

*For example, the minimum withdrawal in a year for a person aged 60 at the start of the year whose LIF has a balance of \$200,000 at the start of the year is as follows:

\$200,000 × 3.33% = \$6,667.67 (minimum withdrawal for the fiscal year)

Maximum Withdrawal Formula

$$\frac{\text{Amount in LIF at start of year}}{\text{Present value of payments of \$1 dollar per year to end of age 90}} = \text{Maximum dollar withdrawal in year}$$

The table below shows the maximum percentage of the LIF balance (at the start of the year) which must be withdrawn annually. The maximum annual withdrawal at each age must be recalculated on January 1st of each fiscal year. The dollar amount of the withdrawal must be calculated yearly based on the applicable percentage for that year.

Table 2

Age at Start of Year	New Age During Year	Years to end of age 90	1992 Maximum Withdrawal as a Percentage of the LIF Balance at the Start of Year
54	55	36	0.00%
55	56	35	8.23%
56	57	34	8.29%
57	58	33	8.36%
58	59	32	8.43%
59	60	31	8.51%
*60	61	30	8.59%
61	62	29	8.68%
62	63	28	8.78%
63	64	27	8.89%
64	65	26	9.01%
65	66	25	9.13%
66	67	24	9.27%
67	68	23	9.42%
68	69	22	9.59%
69	70	21	9.77%
70	71	20	9.97%
71	72	19	10.19%
72	73	18	10.44%
73	74	17	10.71%
74	75	16	11.02%
75	76	15	11.36%
76	77	14	11.77%
77	78	13	12.24%
78	79	12	12.80%
79	80	11	13.47%

Note: The above table is based on the CANSIM interest rate (December 1991) of 8.97% for the first 15 years following January 1, 1992, and 6% thereafter.

*For example, the maximum withdrawal in a year for a person aged 60 at the start of the year whose LIF has a balance of \$200,000 at the start of the year is as follows:

\$200,000 x 8.59% = \$17,180.00 (maximum withdrawal for fiscal year)

(Continued from page 4)

The Ontario LIF and LIFs established in other jurisdictions

At the request of the carriers which are permitted to sell LIFs, all jurisdictions intending to introduce the LIF will endeavour to create a product that is reasonably consistent across Canada.

The features of the Ontario LIF closely parallel the Quebec model in the key areas of the formula for annual withdrawal, the transfer provisions, and the information available on the annual statement. However, some adjustments have been made to bring Ontario's LIF into compliance with specific requirements under the Ontario Act and Regulations.

At present, no reciprocal agreement exists for the Ontario LIF to be transferred outside Canada. Owners may, however, transfer the balance of their LIF to a locked-in registered vehicle in another jurisdiction within Canada. To do this, the financial institution making the transfer must ensure the funds will continue to be administered as locked-in by the financial institution which receives the transfer.

Ontario LIF Regulation 564/92 is published on page 12 of this issue.

Regulation 629/92 Explanatory Notes

Regulation 629/92 was filed on October 9, 1992 and was in force as of that date. The Regulation was published in the *Ontario Gazette* dated October 24, 1992. The following is a summary of the changes made by the Regulation:

Commuted value calculations

- Subsection 16(1) of the Regulation has been amended in order to substitute provisions which expand on and clarify the rules for computing the minimum commuted value of a pension benefit in various on-going plan situations.
 - In situations where subsection 42(1) of the Pension Benefits Act (the Act) applies, the commuted value of a pension, deferred pension or ancillary benefit shall not be less

than the value determined in accordance with "Recommendations for the Computation of Minimum Transfer Values of Pensions" issued by the Canadian Institute of Actuaries and effective November 14, 1988. The CIA minimum requirement does not apply if a plan is wound up in whole or in part (subsection 16 (1a)).

- In situations where subsections 42(1) of the Act and 25(2) of the Regulations do not apply, the commuted value of the same benefits identified above, is to be calculated in accordance with generally accepted actuarial principles and practices (GAAP) - (subsection 16(1b)).
- In wind up situations, subsection 25(2) requires that the minimum commuted value be the amount required to purchase the benefit from an insurance company at the date of wind up.

Credited interest

- Where less than 100 percent of the commuted value of benefits is initially transferred, interest on the balance must be credited at the rate used to calculate the commuted value (subsection 16(7a)).
- A pension plan cannot specifically provide that the manner in which interest is credited be the lower of the five-year term deposit rate and the fund rate of return. Interest must be calculated at least annually (subsections 21(2) and (2a)).
- Lump sum amounts must be credited with interest at the same rate used to credit interest on member contributions from the member's date of termination to the beginning of the month of payment (subsection 21(10)).
- Commuted values must be credited with interest at the rate used to calculate the commuted value. Interest is to accumulate from the date of termination, or the date of wind-up, to the beginning of the month of payment (subsections 21(10a) and (11)).

Guaranteed annuity contracts

- Guaranteed Annuity Contracts established before January 1, 1988 and contracts issued pursuant to the Government Annuities Act (Canada) are exempt from compliance with the

transfer requirements, credited interest calculations and triennial filing requirements (subsection 43(7)). This exemption does not apply to benefits payable as a result of terminations, plan wind up, or plan conversions that took place prior to October 9, 1992.

Filing deadlines on plan wind up

- The time period for filing all outstanding Annual Information Returns (AIRs) required to be filed to the effective date of wind up has been extended from three months to six months after the effective date of wind up (subsection 25(4)).
- Financial statements and AIRs for the period from the most recent fiscal year end to the effective date of wind up must be filed within six months following the effective date of wind up (subsection 25a(1)).
- The Administrator must review the statement of investment policies and goals within 90 days following the date of wind up and file confirmations or amendments in accordance with section 64 of the Regulation (subsection 25a(2)). Any amendments after the effective date of wind up must be filed within 90 days of the adoption of the amendment (subsection 25a(3)).
- The Administrator must now provide the Superintendent with written notice that the distribution of plan assets has been completed. Notice must be filed within 30 days following final distribution (subsection 25a(4)).

Notices:

- Subsection 22(3) of the Regulation has been revoked. However, the requirement for the Superintendent to comment on the adequacy of the content of a surplus withdrawal application will continue to be part of the Administrative Practice. No notice is to be distributed prior to filing with the Superintendent (subsection 24(5a)).
- Subsection 24(2) has been amended to require that the individual statement provided at wind up must disclose that the proposed settlements and the wind up are subject to the approval of the Pension Commission of Ontario and of Revenue Canada, and may be adjusted accordingly.

Corrections to the existing Regulation:

- Subsection 25(8) - reference in the last paragraph should be to section 28 not to section 30.
- Paragraph 36(1)(r) - should read "a statement setting out the treatment of any surplus in a continuing plan and on wind up."
- Paragraph 36(1)(s) - reference should be to subsection 35(1) not subsection 37(1).

Leshner Ruling

On August 31, 1992 the Ontario Human Rights Commission decided in favour of extending survivor benefits to persons in same sex conjugal relationships, in the matter of the Public Service Pension Plan.

Mr. Leshner, who is a member of the Public Service Pension Plan, argued that the denial of survivor benefits to his same sex "conjugal" partner constituted a contravention of the Ontario Human rights code (the "Code").

The Board of Inquiry under the Code ruled in Mr. Leshner's favour and held that the provisions of the Public Service Pension Plan that provide survivor benefits only in the case of opposite sex "spouses" violate the equality provision of the Charter of Rights and Freedoms (the "Charter"). The Board ruled that the same sex survivor benefits would have to be given to Mr. Leshner's "spouse" as would be available to a spouse of the opposite sex.

The Board of Inquiry, however, recognized that since the Income Tax Act Canada (ITA) does not permit the registration of pension plans that provide for same sex benefits, the Public Service Pension Plan could not be amended unless the ITA was also amended.

As a result, the Ontario government has been ordered to establish an "off-side" or "parallel" arrangement to provide for survivor benefits for persons in "conjugal relationships" who would otherwise have met the definition of "spouse" in the Pension Benefits Act, but are of the same sex. The province has also been ordered

to establish the "off-side" arrangement on either a funded or unfunded basis (if the province chooses an unfunded arrangement it has three years to convert it to a funded arrangement).

The province was also directed to make representations to the federal government within the next three years to attempt to convince the federal government to amend the ITA to permit benefits for same sex spouses.

It is important to note that the ruling of the Human Rights Commission applies only to the Public Service Pension Plan, and extends same sex survivor benefits to an individual living in a conjugal relationship with the member in an arrangement outside the plan.

There is no requirement for plans (including the Public Service Pension Plan) to be amended to provide same sex benefits. Plans providing same sex survivor benefits will not be accepted for registration by the Pension Commission of Ontario, nor will amendments be accepted in that regard.

Telephone Enquiries to the PCO

In Volume 1, Issue 1 of the Bulletin, we discussed the process clients of the Pension Commission should follow to obtain service from the Pension Commission. We want to take this opportunity to emphasize that in order for Commission staff to provide a complete and accurate response to enquiries, it may be necessary for these enquiries to be submitted in writing.

Due to the volume of calls that the Commission receives, a new procedure for handling telephone enquiries was put in place, effective November 2, 1992. Now, telephone calls received by the Commission's reception desk will be streamlined based on whether the call is of a general or specific nature.

The new system is designed to ensure enquiries relating to a particular plan are identified as such, and subsequently referred to the member of the Pension Plans Branch staff who is familiar with that plan. On the other hand, enquiries regarding issues of general policy will be handled by the Commission's Policy and Research

Branch. Callers may be asked to submit their questions in writing to avoid the ambiguity posed by questions of a hypothetical nature. To provide a complete response, it is generally necessary for Commission staff to obtain details relating to the context of the enquiry and plan provisions.

The Commission welcomes enquiries, and the opportunity to provide assistance in helping Administrators and their agents comply with the legislation. We ask callers to understand, however, that Commission staff are not permitted to provide legal advice. The plan Administrator is obliged to seek such advice in any event to comply with his/her statutory obligations under the Pension Benefits Act.

Clients are asked to observe the following steps when calling on the Commission for assistance:

1. Provide a brief background;
2. Explain the business purpose of the proposed action;
3. Separate the legal issues from the policy issues;
4. State your own opinion and support it; and,
5. Reference the relevant sections of the Pension Benefits Act, 1990, and the Regulation.

By adhering to the above, you will save time and help to ensure that you receive from us the information you require. We appreciate your cooperation and look forward to serving you.

CAPSA Update

The Canadian Association of Pension Supervisory Authorities (CAPSA) met for its 43rd meeting in Saskatoon, on October 1 and 2 of this year. Members from all jurisdictions, except Prince Edward Island, were present. Representatives of the federal pension regulator (Office of the Superintendent of Financial Institutions), Revenue Canada, Statistics Canada, and Finance Canada also participate in CAPSA meetings.

The agenda of the 43rd meeting included a proposed new reciprocal agreement among pension regulators, approaches to regulating Retirement Compensation Arrangements (RCA) and

individual pension plans, and updates on new legislation, including new Life Income Fund regulations.

Proposed reciprocal agreement

The existing reciprocal agreement allows plans to be registered in one jurisdiction only, and the jurisdiction of registration is the one with the plurality of members. Currently, the pension benefits legislation of a particular province, or the federal jurisdiction, applies based on the location of a member's employment. Plans which have employees in more than one jurisdiction are therefore subject to the laws of more than one pension supervisory authority. The jurisdiction of a member's employment determines issues of a member's benefit entitlement. Administrative matters are governed by the rules of the jurisdiction of registration.

CAPSA members have long agreed on the desirability of a simpler arrangement to reduce the administrative complexity for multi-jurisdictional plans. CAPSA members recently agreed, in principle, to a proposal which would apply the law of the jurisdiction in which a multi-jurisdictional plan is registered to all aspects of benefit entitlement and administration, regardless of the residency of the plan members. (The application of Ontario's Pension Benefit Guarantee Fund will be an exception to this proposed agreement.)

At the Saskatoon meeting progress was made on the proposal, and a plan for carrying the concept forward was agreed upon.

Individual pension plans

In response to recent changes in Regulations under the Income Tax Act (Canada), the pension and financial services industry is marketing individual customized defined benefit pension plans designed for significant shareholders and certain other "connected" persons. Based on tax savings and administrative costs, individual pension plans are generally designed for persons who are at least 40 years of age, and have a annual income exceeding \$86,000.

At the Saskatoon meeting, CAPSA members discussed the appropriate means of regulating such plans. The issue is one of increasing importance as more one-person plans are established. It was agreed that a discussion paper on this subject

would be prepared as a means of initiating discussion within the pension industry.

New legislation

Alberta passed Bill 31 in July 1992, which provides greater flexibility, resolves tax issues, streamlines administration, and addresses Life Income Fund (LIF) and Locked-in Retirement Account (LIRA) issues. Alberta has also established an Actuarial Advisory Committee, and plans to set up a Regulations Advisory Committee in 1993.

British Columbia expects its new legislation to be in force January 1, 1993. A Pension Benefits Advisory Council has been appointed, and a competition for the position of the Superintendent is under way.

Manitoba passed Bill 76 in June 1992. The Bill introduced changes proposed through a public discussion process. Highlights include: Lifting the moratorium on the withdrawal of surplus funds in ongoing plans; provision of a life income fund for members of money purchase plans; special legislation for multi unit pension plans; clarification that RCA's are not pension plans; clarification that declaration forms are needed to confirm the length as well as existence of common law relationships; adoption of provisions which provide the authority to adopt the "final location" approach to benefit entitlement on retirement; and allowing for mutual opting out of mandatory credit splitting on marriage breakdown. A review of the Commission's role and mission is also under way.

New pension benefits legislation came into effect in New Brunswick on December 31, 1991, and pension plans continue to register with the Commission.

Newfoundland anticipates that its new Pension Benefits Act will be in effect on January 1, 1993 with Regulations to be proclaimed at a later date.

Nova Scotia passed Bill 287 which permitted the introduction of a LIF in June 1992. Regulations prescribing a LIF similar to the Québec model are being drafted.

Ontario enacted regulations creating a LIF based on the Québec model, and continues to implement a backlog reduction plan and new workload management system.

Québec reported that Bill 30, which lifts the moratorium on surplus withdrawals on wind up and streamlines the termination of plans with less than 15 members, was tabled in the national assembly. Forty-five LIFs and 143 LIRAs are registered in Québec.

Saskatchewan's Pension Benefits Act, 1992 will come into force January 1, 1993, with the exception of new vesting and pre-retirement survivor benefits which take effect one year later. Regulations will be released for consultation this fall.

CAPSA members agreed to form a working group to study the filing requirements of the various pension regulators, Revenue Canada and Statistics Canada, with a view to achieving greater uniformity, eliminating duplication and easing the administrative burden on plan Administrators. The working group will be meeting this fall to develop terms of reference.

Notices

Change to Actuarial Review Procedure

In the past, when staff of the Pension Commission came to the conclusion that actuarial reports may not be in compliance with professional standards, legislative requirements, or Commission guidelines, they approached the plan actuary to have the problems addressed.

A change to this procedure was announced on November 19, 1992 at the Canadian Institute of Actuaries (CIA) meeting in Quebec City by Teck Go, Director of the Commission's Actuarial Services Branch. Under the new procedure, the Pension Commission of Ontario may submit reports which it believes are not in compliance with professional standards to the CIA directly, without first discussing the report with the plan actuary. Reports may also be referred to the CIA for guidance when it is not clear whether the professional standards have been met.

New Solvency Regulation Passed

Regulation 712/92 was filed on November 26, 1992 and is in force as of that date. The Regulation was published in the *Ontario Gazette* dated December 12, 1992.

Copies are available from the Pension Commission of Ontario.

Selection of Administrators for Insolventcies

In Volume 2, Issue 3 of the Bulletin it was indicated that a new procedure was planned for the appointment of Administrators in cases of insolventcies. To date, criteria for the selection process have been developed. Submissions received by various firms wishing to be considered for appointment are being evaluated based on these criteria. The new procedure is expected to be formalized early in the new year.

Erratum

The October issue of the Bulletin (Volume 3, Issue 2) contained a notice with regard to "Identifying a Successor Pension Plan under Section 8." The correct reference is to Section 80, under Sales, Transfers and New Plans, in the Pension Benefits Act, R.S.O. 1990, c. P.8.

The following is a reprint of that notice.

Where an employer who contributes to a pension plan sells, assigns or otherwise dispenses of all or part of the employer's business or all or part of the assets of the employer's business, the existence of or potential for the establishment of a successor pension plan shall be determined in accordance with the terms and conditions of the purchase and sale document.

The successor pension plan shall be identified under the terms and conditions of the purchase and sale document as a pension plan, already established by the purchaser or as a pension plan promised to be established by the purchaser, under which all affected members of the vendor's plan will be eligible for immediate membership.

Regulations

Regulation to amend Ontario Regulation 708/87 made under the Pension Benefits Act

Regulation 564/92 (the Life Income Fund) was filed September 18, 1992, and published in the Ontario Gazette dated October 3, 1992.

1.-(1) Subsection 18(1) of the Regulation is revoked and the following substituted:

(1) The following are prescribed retirement savings arrangements for the purposes of clause 43(1)(b) of the Act:

1. A registered retirement savings plan established in accordance with the *Income Tax Act* (Canada).

2. A life income fund that meets the requirements for a registered retirement income fund under the *Income Tax Act* (Canada).

(2) Subclause 18(2)(a)(iii) of the Regulation is amended by striking out "an insurance company" in the third line and substituting "a person authorized under the laws of Canada or a province to sell annuities as defined in section 248 of the *Income Tax Act* (Canada)".

(3) Clause 18(2)(a) of the Regulation is amended by striking out "or" at the end of subclause (ii), adding "or" at the end of subclause (iii) and adding the following subclause:

(iv) prior to maturity, to transfer the money to a life income fund.

(4) Section 18 of the Regulation is amended by adding the following subsection:

(5) In this section, "life income fund" means a life income fund that meets the requirements set out in Schedule 1 to this Regulation.

2.-(1) Section 19 of the Regulation is amended by inserting after "retirement savings arrangement" in the fourth and fifth lines "or life income fund".

(2) Clauses 19(c) and (d) of the Regulation are revoked and the following substituted:

(c) in the case of the unexpired period of a guaranteed annuity, the annuitant may commute a benefit provided under the annuity only for the purpose of purchasing a life income fund;

(ca) in the case of the unexpired period of a guaranteed annuity where the annuitant is deceased, the former member's spouse, if any, may surrender or commute the benefit provided under the annuity during the spouse's lifetime;

(d) a transaction that contravenes clause (c) or (ca) is void.

(3) Clause 19(g) of the Regulation is revoked and the following substituted:

(g) on the death of the annuitant before payment of the annuity, the financial institution referred to in section 18 will administer the annuity in accordance with section 48 of the Act.

(4) Section 19 of the Regulation is further amended by adding the following subsection:

(2) The insurance contract must provide that, if a life income fund is being purchased as described in clause (1)(c), the financial institution disclose to the annuitant the difference between the commuted value of the annuity and the amount that will be transferred to the life income fund.

3. The Regulation is amended by adding the following schedule:

Schedule 1 Life Income Fund Requirements

Establishing the fund

1. Only the following persons may purchase a life income fund with respect to their entitlement to a pension under a pension plan:

1. A member or former member of the pension plan who has obtained the written consent of his or her spouse, if any.

2. The spouse or former spouse of a member or former member if the spouse or former spouse is entitled to a pension benefit as a result of the death of the member or former member or as a result of marriage breakdown.

2.-(1) An arrangement establishing a life income fund must provide for the matters described in this section.

(2) It must indicate the name and address of the financial institution providing the fund.

(3) It must describe the purchaser's power, if any, respecting investment of the assets in the fund.

(4) It must state that the purchaser agrees not to assign, charge, anticipate or give as security money payable under a life income fund except for a purpose described in subsection 65(3) of the Act.

(5) It must describe the method for determining the value of the fund. This valuation method must be the one that is to be used to establish its value upon the death of a person entitled to payment, upon the establishment of a life annuity or upon a transfer of assets from the fund.

3. The fiscal year of the fund must end on the 31st day of December and must not exceed twelve months.

Periodic payments out of the fund

4.-(1) Payments out of the life income fund must begin,

(a) no earlier than ten years before the purchaser reaches normal retirement age as determined under the Canada Pension Plan or the Quebec Pension Plan, and

(b) no later than the end of the second fiscal year of the fund.

(2) The purchaser must decide the amount to be paid out of the fund each year. He or she must do so either at the beginning of the fiscal year of the fund or at another time agreed to by the financial institution. His or her decision expires at the end of the fiscal year to which it relates.

(3) If the purchaser does not decide the amount to be paid out of the fund for a year, the minimum amount determined under section 5 shall be deemed to be the amount to be paid.

(4) Payments out of a life income fund are subject to division in accordance with the terms of a domestic contract as defined in Part

IV of the Family Law Act or the terms of an order made under Part I of that Act.

5.-(1) The amount of income paid out of the life income fund during a fiscal year must not exceed "maximum" in the following formula:

maximum = C / F

in which,

C = the balance in the fund at the beginning of the fiscal year, and

F = the value, at the beginning of the fiscal year, of a pension of which the annual payment is one dollar payable at the beginning of each fiscal year between that date and the 31st day of December of the year in which the purchaser reaches 90 years of age.

(2) The amount of income paid out of the fund during a fiscal year must not be less than "minimum" in the following formula:

minimum = C / H

in which,

C = the balance in the fund at the beginning of the fiscal year, and

H = the number of years between the 1st day of January of the year in which the calculation is made and the 31st day of December of the year in which the purchaser reaches 90 years of age.

(3) The following apply with respect to the determination of the amount "F" in subsection (1):

1. The amount "F" must be established at the beginning of each fiscal year of the fund using an interest rate of not more than 6 per cent.

2. For the first 15 years after the date of the valuation, the value of the pension may be determined by using a percentage that is,

i. greater than 6 per cent, and

ii. less than or equal to the percentage obtained on long-term bonds issued by the Government of Canada for the month preceding the date of the valuation, as compiled by Statistics Canada and published in the Bank of Canada Review under identification number B-14013 in the CANSIM system.

(4) For the initial fiscal year of the fund,

(a) the “maximum” in subsection (1) shall be adjusted in proportion to the number of months in that fiscal year divided by 12, with any part of an incomplete month counting as one month; and

(b) the “minimum” in subsection (2) shall be deemed to be zero.

(5) If a part of the fund purchased at the beginning of a fiscal year corresponds to sums transferred directly or indirectly during the same year from another life income fund of the purchaser, the “maximum” in subsection (1) shall be deemed to be zero.

Transferring assets from the fund

6.-(1) The purchaser of the life income fund may transfer any or all the assets in it,

(a) to another life income fund;

(b) to purchase an immediate life annuity that meets the requirements of section 19 of the Regulation;

or

(c) before the 31st day of December in the year in which the purchaser reaches 71 years of age, to a registered retirement savings plan that meets the requirements of section 18 of the Regulation.

(2) In the arrangement establishing the fund, the financial institution must agree to make such a transfer within 30 days after the purchaser requests it. This does not apply with respect to the transfer of assets held as securities whose term of investment extends beyond the 30-day period.

(3) If the assets in the life income fund consist of identifiable and transferable securities, the financial institution may transfer the securities with the consent of the purchaser.

Payment of the balance in the fund

7.-(1) The purchaser of the fund shall use any assets remaining in the life income fund on the 31st day of December in the year in which he or she reaches 80 years of age to purchase an immediate life annuity that meets the requirements of section 19 of the Regulation.

(2) If the purchaser of the fund does not purchase the life annuity on or before the 31st day of March in the year after the year in which he or she reaches 80 years of age, the financial institution shall issue or arrange for the issuance of a life annuity contract.

(3) For the purposes of the life annuity, the spousal status of the purchaser of the fund is to be determined on the date the annuity is purchased.

(4) Payments under a life annuity are subject to division in accordance with the terms of a domestic contract as defined in Part IV of the Family Law Act or the terms of an order made under Part I of that Act.

Survivor's benefits

8.-(1) If the purchaser of the life income fund is a member or former member of the pension plan and if he or she dies before the balance of the fund is used to purchase the life annuity, the purchaser's spouse or, if there is none, his or her named beneficiary or, if there is none, his or her estate is entitled to receive a benefit equal to the balance in the fund.

(2) A spouse living separate and apart from the purchaser on the date of the purchaser's death is not entitled to receive the balance of the fund.

(3) For the purposes of subsection (1), a person's spousal status is determined on the date of death of the purchaser.

9.-(1) The spouse of the purchaser of the life income fund may waive survivor's benefits under the fund before the balance of the fund is used to purchase an immediate life annuity.

(2) A waiver of survivor's benefits may be revoked before the balance of the fund is used to purchase an immediate life annuity.

(3) The waiver or revocation is made by giving notice to the financial institution providing the life income fund.

Amending the fund

10.-(1) In the arrangement establishing the life income fund, the financial institution providing the fund must agree not to amend the arrangement except as provided in this section.

(2) The financial institution must give the purchaser of the fund at least 90 days notice of a proposed amendment, other than an amendment described in subsection (3).

(3) The financial institution must not amend the arrangement if the amendment would result in a reduction in the purchaser's benefits under the arrangement unless,

(a) the financial institution is required by law to make the amendment; and

(b) the purchaser is entitled to transfer the balance in the life income fund under the terms of the arrangement that exist before the amendment is made.

(4) When making an amendment described in subsection (3), the financial institution must,

(a) notify the purchaser of the fund of the nature of the amendment; and

(b) allow the purchaser at least 90 days after the notice is given to transfer all or part of the balance in the fund.

(5) Notices under this section must be sent by registered mail to the purchaser's address as set out in the records of the financial institution.

Information to be provided by the financial institution

11.-(1) In the arrangement establishing the life income fund, the financial institution must agree to provide the information described in this section to the person indicated.

(2) At the beginning of each fiscal year, the following information must be provided to the purchaser:

1. The sums deposited, the accumulated earnings, the payments made out of the fund and the fees charged against it during the previous fiscal year.

2. The balance in the fund.

3. The minimum amount that must be paid out of the fund to the purchaser during the current fiscal year and each subsequent one.

4. The maximum amount that may be paid out of the fund to the purchaser during the current fiscal year and each subsequent one.

(3) If the balance of the fund is transferred as described in subsection 6(1), the purchaser must be given the information described in subsection (2) determined as of the date of the transfer.

(4) If the purchaser dies before the balance in the fund is used to purchase an immediate life annuity, the person entitled to receive the balance must be given the information described in subsection (2) determined as of the date of the purchaser's death.

Regulation 629/92 to amend Ontario Regulation 708/87 made under the Pension Benefits Act

Regulation 629/92 (minor miscellaneous amendments) was filed on October 9, 1992, and was published in the Ontario Gazette dated October 24, 1992.

1.-(1) Subsection 16(1) of Ontario Regulation 708/87, as remade by section 1 of Ontario Regulation 589/89, is revoked and the following substituted:

(1) For the purposes of subsection 42(1) of the Act, the commuted value of a pension, deferred pension or ancillary benefit shall not be less than the value determined in accordance with "Recommendations for the Computation of Minimum Transfer Values of Pensions" issued by the Canadian Institute of Actuaries and effective the 14th day of November, 1988.

(1a) Subsection (1) does not apply if a pension plan is being wound up in whole or in part.

(1b) For purposes other than those of subsection 42(1) of the Act and subsection 25(2), the commuted value of a pension, deferred pension or ancillary benefit shall be calculated in accordance with generally accepted actuarial principles and practice.

(2) Subsection 16(7) of the Regulation is revoked and the following substituted:

(7) If less than 100 per cent of the commuted value of a pension, deferred pension or ancillary benefit is transferred, the balance shall be transferred by the administrator within five years after the date of the initial transfer.

(7a) Interest shall accumulate, at the same rate used to calculate the commuted value of the pension, deferred pension or ancillary benefit, on the balance to be transferred under subsection (7).

(7b) A transfer under subsection (7) after the initial transfer shall be made in accordance with subsection (6).

2.-(1) Subsection 21(2) of the Regulation is revoked and the following substituted:

(2) Contributions, other than additional voluntary contributions, of members and former members of a pension plan that provides defined benefits shall be credited not less frequently than annually with interest calculated at a rate that is not less than the rate calculated on the basis of the yields of five-year personal fixed-term chartered bank deposit rates as determined from the Canadian Socio-Economic Information Management (CANSIM) series B 14045 published monthly in the Bank of Canada Review over a reasonably recent period, such that the averaging period does not exceed twelve months.

(2a) Despite subsection (2), a pension plan may provide that the contributions described in that subsection shall be credited not less frequently than annually with interest calculated at a rate that is not less than such rate of return as can reasonably be attributed to the pension fund or to that part of the pension fund to which the contributions are made.

(2) Subsections 21(10) and (11) of the Regulation are revoked and the following substituted:

(10) If a person is entitled to be paid a lump sum from a pension plan, the amount owing to him or her shall accumulate interest, to be calculated at the same rate used to calculate interest on contributions of members and former members under the plan. The interest shall accumulate from the date of termination to the beginning of the month of payment.

(10a) If a person makes an election under section 42 of the Act (transfer of deferred pension), the commuted value of the deferred pension shall accumulate interest, to be calculated at the same rate used to calculate the commuted value. The interest shall accumulate from the date of termina-

tion to the beginning of the month of payment.

(11) If a person makes an election under subsection 73(2) of the Act (transfer of pension benefit on wind up), the commuted value of the deferred pension shall accumulate interest, to be calculated at the same rate used to calculate the commuted value of the pension benefit in the wind up report. The interest shall accumulate from the effective date of the wind up to the beginning of the month of payment.

3. Subsection 22(3) of the Regulation is revoked.

4.-(1) Subsection 24(2) of the Regulation is amended by striking out “and” at the end of clause (r), inserting “and” at the end of clause (s) and adding the following clause:

(t) notice that the entitlements and options are subject to the approval of Pension Commission of Ontario and of Revenue Canada, and may be adjusted accordingly.

(2) Section 24 of the Regulation is amended by adding the following subsection:

(5a) The employer shall provide a copy of the notice required under subsection 78(2) of the Act to the Superintendent before transmitting it.

5.-(1) Subsection 25(2) of the Regulation is revoked and the following substituted:

(2) If a pension plan is being wound up in whole or in part, the minimum commuted value for the purposes of subsection 73(2) of the Act of a pension, deferred pension or ancillary benefit shall be the amount required to purchase the benefit from an insurance company as of the effective date of the wind up.

(2) Subsection 25(4) of the Regulation is amended by striking out “three” in the fifth line and substituting “six”.

(3) Subsection 25(8) of the Regulation is amended by striking out “section 30” in the seventeenth line and substituting “section 28”.

6. The Regulation is amended by adding the following section:

25a-(1) The administrator shall file the following documents within six months after the effective date of the wind up for the period

from the most recent fiscal year end to the effective date:

1. An annual information return under section 15.
 2. Financial statements under section 72 for the pension fund or plan.
- (2) Within ninety days after the effective date of the wind up, the administrator shall review the statement of investment policies and goals and file confirmations or amendments under section 64.
- (3) The administrator shall file any amendment to the statement of investment policies and goals made after the effective date of the wind up within ninety days after the adoption of the amendment.
- (4) Within thirty days after final distribution of the assets of a pension plan under section 70 of the Act, the administrator shall give the Superintendent written notice that all the assets of the plan have been so distributed.
- 7. Clauses 36(1)(r) and (s) of the Regulation are revoked and the following substituted:**
- (r) a statement setting out the treatment of any surplus in a continuing plan and on wind up;
- (s) an explanation of any amendments affecting the member made to the pension plan during the period covered by the statement, if an explanation has not been provided under subsection 35(1).
- 8. Section 43 of the Regulation, as most recently amended by section 1 of Ontario Regulation 69/92, is further amended by adding the following subsection:**

(7) The administrator of a pension plan is exempt from the following provisions with respect to benefits provided by guaranteed annuity contracts established before the 1st day of January, 1988 or by one or more contracts issued under the Government Annuities Act (Canada):

1. Subsection 42(1) of the Act.
2. Subsection 11(1) of this Regulation.
3. Section 21 of this Regulation.

Your Questions Answered

The answers to the questions set out in this section have no legal authority nor should they be construed as legal advice. You should obtain independent legal, actuarial or other professional advice if you have a particular interest in any of the matters addressed herein.

- Q. When locked-in funds are transferred for the purchase of a life annuity, can sex differentiated mortality tables be used in the calculation of the annuity?**
- A.** As of the introduction of the *Pension Benefits Act, 1987*, discrimination on the basis of sex is prohibited in the determination of benefits and eligibility conditions for those benefits. As a result, only annuity factors that do not differentiate on the basis of sex of the member may be used. Section 18(3) of the Regulation specifically states that "an immediate or deferred life annuity that is purchased with funds from a prescribed retirement savings arrangement shall not differentiate on the basis of the sex of the beneficiary..."
- Q. When can locked-in RRSPs be annuitized?**
- A.** According to Revenue Canada rules, a locked-in RRSP must be annuitized no later than the end of the year in which the owner turns 71. Locked-in RRSPs may be annuitized as early as age 55. A deferred annuity may be purchased with locked-in funds any time after age 18.
- Q. Does the holding of an investment which is not redeemable before maturity restrict the date the owner of a locked-in RRSP may annuitize?**
- A.** Owners of locked-in RRSPs may annuitize before the expiry of the term of an investment at the discretion of their financial institution. Individuals making investment decisions should be mindful of the fact that Revenue Canada requires RRSPs to be collapsed before age 72.

Superintendent of Pensions Notices/Orders

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, 1990, [Notice of Proposed Wind-up Order], issued a Notice of Proposal to Make an Order pursuant to section 69 of the PBA, 1990 dated September 30, 1992 for the following pension plan:

- a) H.H.C. Marketing Corporation (C-18950)

The Superintendent, pursuant to subsection 89(5) of the PBA, 1990, [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA, 1990 dated September 29, 1992 for the following pension plans:

- a) Lord & Burnham Inc. Employees' Pension Plan (C-7526)
- b) Pension Plan for the Management Employees of Power Tank Lines Limited (C-16761)
- c) Pension Plan for the Non-Management Employees of Power Tank Lines Limited (C-102584)

Orders

The Superintendent issued Orders dated September 29, 1992 pursuant to section 69 of the PBA, 1990 [Wind-up Orders] for the following pension plans:

- a) Marathon Equipment Ltd. Retirement Plan (C-010933)
- b) The Revised Pension Plan for Employees of J.C. Hallman Manufacturing Company Limited (C-000656)
- c) Staff Pension Plan for Employees of Mandem Inc. (C-041888)

The Superintendent issued an Order dated October 5, 1992 pursuant to section 69 of the PBA, 1990 [Wind-up Order] for the following pension plan:

- a) Retirement Plan for the Employees of Orangeville Foundry Ltd. (C-103512)

Administrators Appointed

Date/Plan	Administrator
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May 92

Marshall Refrigeration Co. Limited Pension Plan C-221	Manufacturers Life
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July 92

Canadian Building Systems Inc. Salaried Employees Plan C-9343	Arthur Anderson Inc.
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Hourly Employees Plan C-9344	Arthur Anderson Inc.
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Hunter Brown Limited Employees Pension Plan C-14507	Superintendent
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Jaeger Canada Equipment Ltd. Employees Pension Plan C-3041	Price Waterhouse
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Hourly Rated Pension Plan C-15969	Price Waterhouse
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Keen Community Credit Union Limited Retirement Plan C-13463	Superintendent
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Lormar Mechanical Corporation Limited Pension Plan C-103969	Superintendent
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Maher Inc. Pension Trust Fund C-10834	Price Waterhouse
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Orangeville Transport Ltd. Employees Pension Plan C-11108	Superintendent
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St. Lawrence Foods Corporation Employees Pension Plan C-5475	SunLife
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Date/Plan	Administrator	Date/Plan	Administrator
<u>August 92</u>		Sound Insight Limited Executive Pension Plan C-18819	Superintendent
Bluebird Bakery Ltd. Employees Pension Plan C-14915	Superintendent	Timberlea Packaging Inc. Pension Plan for Controlling Significant Shareholders RA-104188	Superintendent
C&C Precision Tool Limited Pension Plan C-14391	Superintendent	Van Dresser Limited Salaried Employees Pension Plan C-12548	Ernst & Young
Contract Hardware Specialists 1974 Ltd. Staff Pension Plan RA-103908	Superintendent	Woodyatt Power Train Employees Pension Plan C-14354	Standard Life
Dilworth Secord Meacher & Associates Employees Pension Plan C-11531	Superintendent		
Exclusive Holding Ltd. Employees Pension Plan C-18531	Superintendent		
Jeffery Group Inc. Pension Plan C-15147	Maritime Life		
Pascal Stores Ltd. Employees Pension Plan C-14761	Superintendent		
Smith Brothers Inc. Pension Plan C-1114	SunLife		
<u>September 92</u>			
Air Ride Transportation Ltd. Employees Pension Plan C-12794	Superintendent		
American Healthcare Mfg. Canada Ltd.: Employees Pension Plan C-19292	Arthur Anderson		
Retirement Plan RA-104144	Arthur Anderson		
Anderson Farms Employees Pension Plan C-100252	Standard Life		
Canadian Asbestos Services Ltd. Employees Pension Plan C-100273	Superintendent		
Empire Store Fixtures Ltd. Employees Pension Plan 103461	Superintendent		
HHC Marketing Corporation Pension Plan C-18950	Superintendent		

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

Commission Meeting Dates, 1992 and 1993

The Pension Commission will convene on the following Thursdays in 1993:

January 28, 1993, February 25, March 25, April 29, May 27, June 24, July 29, August 26, September 23, October 28, November 25, December 16, 1993.

PCO Board Members

The following individuals comprise the tribunal:

Joseph Regan, Chairman
Eileen Gillese, Vice Chair
Darcie Beggs
David Brown
Robert Nickerson
Donald Collins
Joyce Stephenson
Clifford Evans
Monica Townson

Hearings before the Commission

General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published in the March 1991,

Vol. 2, Issue 1 edition of the Bulletin. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, August 19, 20, October 23 - 25, 1991. On May 20, 1992, the hearing was adjourned without a future date being set (*sine die*).

Stelco Inc. Retirement Plan for Salaried Employees (C-6968)

A hearing will be held to review a proposal to make an Order that the plan be partially wound up issued by the Superintendent of Pensions February 28, 1992. A pre-hearing conference was held July 7, 1992 and the decision of the Commission was published in the last issue. The pre-hearing will continue November 30 and December 1, 1992. The hearing is scheduled for January 12, 13, 14, 18, 19 and 20, 1993.

Pension Plan for Designated Employees of Tate Access Floors Inc. (C-103686)

The Commission has been requested to review a proposal dated March 31, 1992 by the Superintendent of Pensions to make an Order that the plan be wound up. This matter has been adjourned *sine die* on consent.

***Commission Decisions
(Since July, 1992)***

Applications Approved Under Subsection 7a(2) of Ontario Regulation 743/91 and Subsection 78(1) of the PBA, 1990 - Request for Return of Surplus Pursuant to a Court Order

At the Commission meeting held August 27, 1992, the Commission consented to filing with the court a consent pursuant to subsection 78(1) of the PBA, 1990 and subsection 7a(2) of Ontario Regulation 743/91 to the payment of plan surplus.

(a) Pension Plan for Employees of Mikropul Limited (C-12604) - Application by Hosokawa Micron Limited

Payment of surplus to Hosokawa Micron Limited from the Pension Plan for Employees of Mikropul Limited, Registration Number C-12604, in the amount of \$104,324 as at December 31, 1987, plus investment earnings thereon to the date of payment.

At the Commission meeting held September 24, 1992, the Commission consented to filing with the court a consent pursuant to subsection 78(1) of the PBA, 1990 and subsection 7a(2) of Ontario Regulation 743/91 to the payment of plan surplus.

(a) Cluett, Peabody Canada Inc. Employee Retirement Plan (C-7208)

Notwithstanding the Decision of the Commission dated May 6, 1991 that the Cluett, Peabody Canada Inc. Employee Retirement Plan (the "Pension Plan") provides that surplus belongs to the members of the Pension Plan, the Commission consents to the payment of surplus to Cluett, Peabody Canada Inc. from the Cluett, Peabody Canada Inc. Employee Retirement Plan, Registration Number C-7208, in the amount of \$150,000 **provided** that this consent shall not be effective until Cluett, Peabody Canada Inc. satisfies the Commission that:

(a) the conditions of the Court Order of the Honourable Mr. Justice Wright dated November 13, 1991 (the "Court Order") have been met; and

(b) that the Superintendent has registered a plan amendment to provide for the distribution of the Employees' share of surplus in the form of enhanced benefits.

Once Cluett, Peabody Canada Inc. has satisfied the Commission that the conditions of the Court Order have been met and the plan amendment has been registered by the Superintendent, the Commission will file its consent with the Court pursuant to Regulation 7a(2)(c) as it read prior to December 18, 1991.

The Commission also hereby consents to the payment of surplus entitlements less than \$100 to employees in cash.

Application Denied Under Clause 7a(1)(b) of Ontario Regulation 743/91 and Subsection 78(1) of the PBA, 1990 - Surplus Withdrawal on Wind Up

At the Commission meeting held August 27, 1992, the Commission refused consent pursuant to subsection 78(1) of the PBA, 1990 and clause 7a(1)(b) of Ontario Regulation 743/91 to the payment of plan surplus.

(a) Pension Plan for Employees of Saynor Varah Inc. and Affiliated Companies ("SVI") (C-13393)

THAT the Pension Commission of Ontario refuse to consent to the application for payment of surplus to Saynor Varah Inc. and Affiliated Companies (SVI) from the Retirement Plan for Employees of Saynor Varah Inc. and Affiliated Companies, Ontario Registration Number C-13393. (See Reasons for Decision published in this Bulletin).

Applications Approved under Subsection 63(7) & (8) of the PBA, 1990 - Requests for Return of Member Contributions

At the Commission meeting held September 24, 1992, the Commission consented pursuant to subsection 63(7) & (8) of the PBA, 1990 to the refund of member required contributions.

(a) Pension Plan for Employees of Wm. Roberts Electrical & Mechanical Inc. (C-103333)

Refund of the sole member's required contributions from the Pension Plan for Employees of Wm. Roberts Electrical & Mechanical Inc., Registration Number C-103333, in the aggregate amount of \$16,141 as at January 1, 1989 plus credited interest thereon to the date of payment.

Request for Consent to Excess Surplus Distribution on Wind up in the form of cash

At the Commission meeting held May 28, 1992, the Commission consented to the following distribution of excess surplus in the form of cash.

(a) Cooper Tools Division of Cooper Industries (Canada) Inc. - Employees' Pension Plan of the Barrie, Ontario Plant and the Mississauga, Ontario Distribution Center

THAT the excess surplus funds be distributed in the form of cash in accordance with the terms of the Agreement between the company and the union.

Request for Consent to Surplus Distribution on Wind up in the form of cash when the amount is less than 4% of Years' Maximum Pensionable Earnings ("YMPE").

At the Commission meeting held September 24, 1992, the Commission consented to the following distribution of surplus in the form of cash.

(a) Houghton/ABF/Telfer Pension Plan (C-12629) - Application by Baton Broadcasting Incorporated

That the surplus distributions to those plan members of the Houghton/ABF/Telfer Pension Plan, Registration No. C-12629, whose surplus entitlement is less than 4% of the Year's Maximum Pensionable Earnings level determined under the Canada Pension Plan may receive their share of surplus distribution in the form of cash.

Decision

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P8;

AND IN THE MATTER OF an application by Saynor Varah Inc. and Affiliated Companies to the Pension Commission of Ontario for its consent pursuant to sections 78 and 79 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 and paragraph 7a(1)(b) of Ont. Reg. 743/91 thereunder.

Before: M. Joseph Regan, Chair; Eileen E. Gillese, Vice Chair; and Commission members Donald Collins and Monica Townson.

Reasons for the Decision:

Nature of the application

Saynor Varah Inc. and Affiliated Companies (the "Applicant") sought the consent of the Pension Commission of Ontario (the "Commission") to the withdrawal of surplus from the Retirement Plan for

the Employees of Saynor Varah Inc. and Affiliated Companies (the “Plan”). The Plan was wound up as at May 15, 1992, at which time the surplus amounted to something in excess of \$1.4 million.

The application, prepared by the Applicant’s actuarial firm, was brought pursuant to sections 78 and 79 of the Pension Benefits Act 1990, c. P.8 (the “Act”) and clause 7a(1)(b) of Ontario Reg. 743/91 (the “Regulation”). Neither the Applicant nor any of those adverse in interest had legal representation. This point must be borne in mind as it had an impact on how the Commission approached the legal and evidentiary issues which presented themselves.

Relevant legislation

Subsections 78(1), (2), (3) and 79(3) of the Act and clause 7a (1) (b) of the Regulation are frequently referred to in the following pages; for ease of reference they are set out here.

78.(1) No money may be paid out of a pension fund to the employer without the prior consent of the Commission.

(2) An employer who applies to the Commission for consent to payment of money that is surplus to the employer out of a pension fund shall transmit notice of the application, containing the prescribed information, to,

- (a) each member and former member of the pension plan to which the pension fund relates;
- (b) each trade union that represents members of the pension plan;
- (c) any other individual who is receiving payments out of the pension fund; and
- (d) the advisory committee established in respect of the pension fund.

(3) A person to whom notice has been transmitted under subsection (2) may make written representations to the Commission with respect to the application within thirty days after receiving the notice.

79.(3) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless,

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan;
- (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan; and
- (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus money[s] out of a pension fund.

7a.(1) No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless, ...

- (b) the payment is to be made to an employer with the written agreement of,
 - (i) the employer,
 - (ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and

-
- (iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.

History of the application

The application was first placed before the Commission at its regularly scheduled monthly meeting on June 25, 1992. In addition to the documentation provided by the Applicant, the Commission was provided with a copy of a staff report dated June 22, 1992 (the “first staff report”), a copy of which had been provided to the Applicant.

The first staff report raised several concerns about the application. First, as the wind up report had only “just been received”, there had been insufficient time to have it reviewed and approved by the Superintendent.

A second concern related to the notice of application that had been transmitted to plan members and former plan members. The Applicant had submitted a proposed form of notice (the “first notice”) to the Superintendent for his advice about its adequacy but had proceeded to transmit the notice before receiving such advice. Subsection 78(2) requires that notice of the application, “containing the prescribed information”, be duly transmitted. Subsection 24 (5) of the Regulation prescribes the information that must be contained in the notice. Clause 24 (5) (c) expressly stipulates that the notice shall set out “the surplus attributable to employee and employer contributions”.

The first notice contained the statement “Based upon our best advice, this surplus is entirely attributable to the employer”. The staff report had this to say about the first notice.

The Superintendent was not able to confirm the adequacy of the notice since the plan actuary did not provide certification regarding the appropriateness of the attribution of surplus between employee and employer contributions as set out in the notice. *The [draft] wind up report provides that no satisfactory method exists for attribution of surplus to employer and employee contributions.* (emphasis added)

A third concern arose from the written representations that staff of the Commission had received from several former members of the Plan objecting to the refund of surplus to the Applicant. Copies of the representations were contained in the first staff report. Some of the representations were simply bald assertions that the Applicant ought not to be entitled to surplus; others, however, raised factual matters the import of which is discussed below.

Despite these problems, the application was brought forward for the Commission’s consideration. The background portion of the first staff report explains why.

The company advises that their financial condition is critical and that without the Commission’s consent to their surplus application in June, it is unlikely that the company will be able to continue to operate as their credit lines have been frozen by the banks. It is for this reason that this application is being expedited by staff and that final confirmation of compliance with all requirements of the Act will not be available until the day of the Commission meeting.

At the Commission meeting on June 25, 1992, staff was unable to provide confirmation that, inter alia, the wind up report had been approved and the first notice was adequate. In light of subsection 79 (3) of the Act, which makes it clear that compliance with all requirements of the legislation is a necessary prerequisite to Commission consent to a surplus withdrawal application, the Commission set the matter over for consideration at its July meeting. Several representatives of the Applicant had attended at the Commission offices to speak to the matter; they were called into the Commission meeting and advised that the documentation in support of the application was incomplete and that consideration of the application would be deferred to the Commission meeting on July 23, 1992.

At the Commission meeting on July 23, 1992, the application was again placed before the Commission. The Commission had before it a revised staff report dated July 15, 1992 and a supplemental staff

report dated July 20, 1992 (together referred to as the "second staff report"), copies of which had been provided to the Applicant. The second staff report established that the Superintendent had approved a final wind up report (the "approved wind up report"). It is important to note that the approved wind up report continued to assert that there was no standard method of calculating the amount of surplus attributable to employee and employer contributions but went on to add that "the surplus attributable to the plan sponsor may range from 50% to 100%, with a best estimate of 75%."

The problems in respect of notice had only been partially resolved. The first notice had been found to be inadequate by the Superintendent for reasons relating to surplus attribution. The first notice, it will be recalled, stated that "Based upon our best advice, this surplus is entirely attributable to the Employer". The Superintendent found this statement to be inconsistent both with the draft wind up report, which certified that no satisfactory method existed for attribution of surplus, and with the approved wind up report, which estimated that the portion of surplus attributable to employer contributions ranged from 50% to 100%, with a best estimate of 75%.

The Applicant was advised by the staff of the Commission that the first notice was inadequate and a second notice, deemed adequate by the Superintendent, was transmitted to Plan members and former Plan members on or about July 2, 1992.

The Commission took the view that the expiration of the time period allowed for representations under subs. 78(3) was a prerequisite to its consideration of any application for surplus withdrawal. Subsection 78(3) allows those to whom notice has been transmitted, thirty days within which to make written representations. Only 21 days had elapsed from the time that the second notice was transmitted (July 2, 1992) to the July Commission meeting (July 23, 1992). As a result, the Commission deferred consideration of the application to its regularly scheduled Commission meeting of August 27, 1992. The members of the Commission also directed the Chair to write to the Applicant to ask that it provide information about the amounts contributed by Plan members and the Applicant, respectively, to the Plan.

By letter dated July 31, 1992, from the Chair of the Commission to the Plan actuary, the Applicant was asked *inter alia* to provide a chart showing all inflows and outflows to the fund from inception to wind up including employer and employee contributions, investment earnings and disbursements. The Applicant was directed to inform members and former members of the Commission's request for information, preferably by forwarding to them a copy of the letter itself.

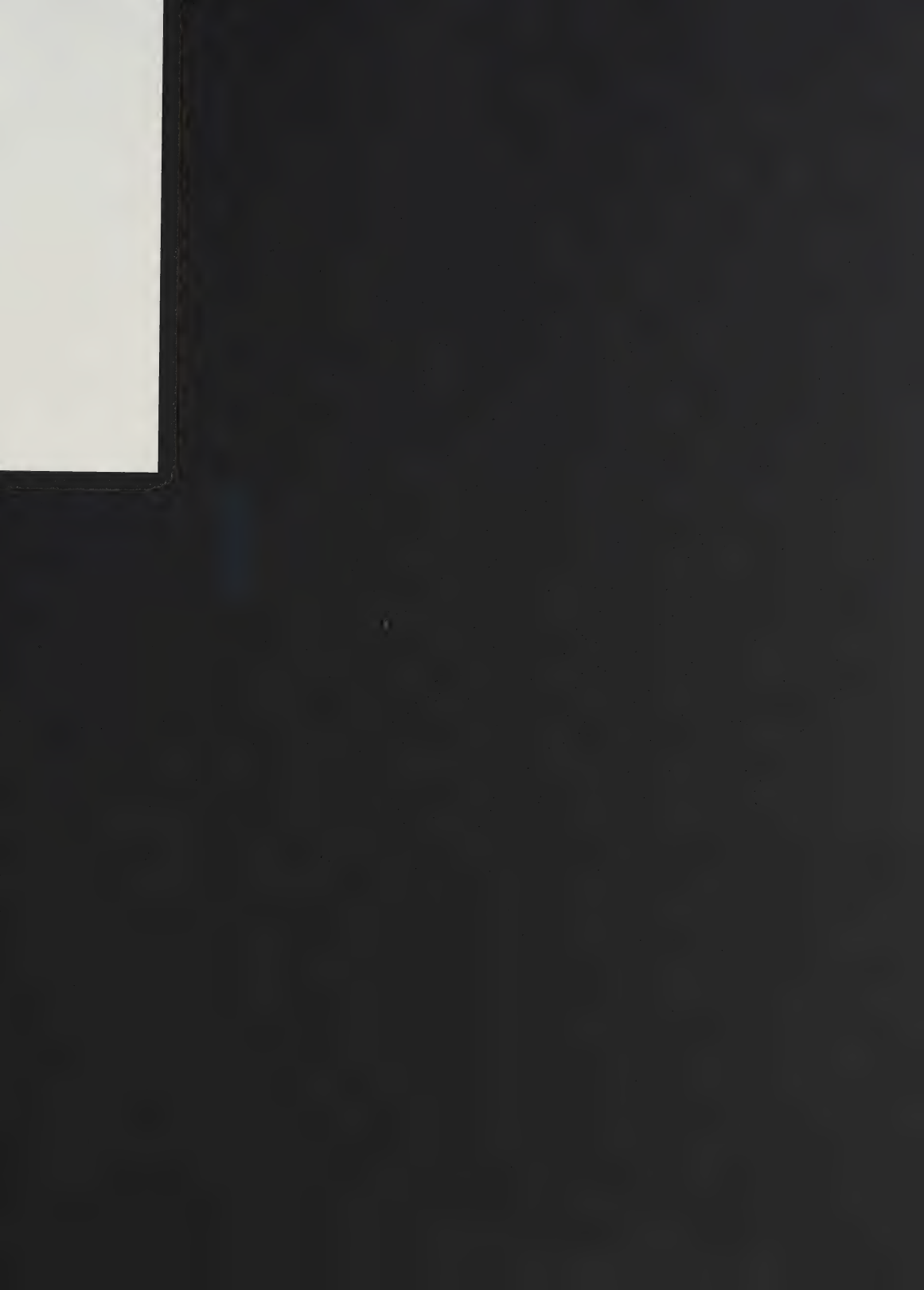
At the Commission meeting of August 27, 1992, the application was considered *in camera*. At the conclusion of its deliberations, the Commission advised the Applicant, in the person of the Plan actuary and certain company representatives, that the Commission did not consent to its application for surplus withdrawal. Reasons were to follow; these are those reasons.

History of the plan

The Plan was originally established, effective June 1, 1974, as a contributory, defined benefit plan. Members contributed the excess of 5% of basic salary over their contributions to the Canada Pension Plan. According to the terms of the pension contract, the Applicant, as employer, was under no obligation to make contributions but did bear the responsibility of fully funding the member benefits should the assets in the Plan be deficient. Apparently the Applicant did contribute in some or all of the years 1974 to 1988 but the amounts of such contributions are unclear.¹

Effective January 1, 1988, the Plan was converted to a non-contributory defined contribution plan. At the time of conversion, the wind up report revealed a surplus in excess of \$1.1 million. Those surplus funds were transferred to the defined contribution plan. From the date of conversion to the time of Plan wind up, all employer "contributions" were made by the Applicant from the surplus. That is, the Appli-

¹ See Issue #2 Surplus Attribution, below, for a fuller explanation of this point.



cant did not transfer any of its own funds to the Plan after conversion on January 1, 1988, but took a contribution holiday through use of the surplus transferred from the original contributory plan. The growth in surplus to the time of wind up, according to the application, was solely from investment income.

Plan provisions

The Plan documentation is remarkably simple. It consists of a Plan text as stated on June 21, 1974 by the Group Pension Department of London Life Insurance Company ("the first Plan text"); the Plan text as restated effective December 1, 1975 ("the second Plan text"); the Plan text as restated on January 1, 1988 ("the final Plan text") and certain amendments which are not relevant to the application. In addition, a pension booklet was provided to employees at the inception of the Plan ("the pension booklet").

The relevant part of the first Plan text is found in section 15.

15. Future of the plan

The Employer has developed the Plan as a continuing program, but of necessity reserves the right, within the prevailing legal requirements to amend, suspend, modify or discontinue the plan for any reason, in whole or in part, should future conditions, in the opinion of the Employer, warrant such action.

In the event of discontinuance of the Plan no contributions made by the Employer on a Member's behalf or any assets of the Plan can be returned to the Employer until all liabilities to covered and retired Members and their beneficiaries have been satisfied. The funds available will be allocated to the Members in an equitable manner as determined by the Company and the Employer, subject to the provisions of the applicable legislation.

In the pension booklet, s.7 stated that the member "will contribute 5% of earnings by payroll deductions, less the amount required to be contributed by you under the Canada or Quebec Pension Plan. The company contributes the remainder of the cost".

Section 15 of the first Plan text was continued in the second Plan text.

However, an amendment effective December 1, 1975, altered section 15 so that it read as follows.

15. Future of the plan

The Employer has developed the Plan as a continuing program But reserves the right to amend, modify or discontinue the plan for any reason, in whole or in part.

In the event of discontinuance of the Plan no contributions made by the Employer on a Member's behalf or any assets of the Plan can be returned to the Employer until all liabilities to covered and retired Members and their beneficiaries have been satisfied. The funds available will be allocated to the Members in an equitable manner as determined by the Company and the Employer, subject to the provisions of the applicable legislation.

The relevant provision in the final Plan text is section 18.

18. Change or discontinuance of the plan

The Company expects to continue the Plan indefinitely but, as future conditions cannot be foreseen, the Company necessarily reserves the right to terminate the Plan in whole or in part or to change the Plan at any time. At no time, however, may any part of the contributions made by the Members of the Company be used for purposes other than for those provided for in the Plan, or will any change to the Plan adversely affect the benefits to which the Members are entitled hereunder on the effective date of such change.

Notwithstanding the provisions of this Section and the provisions of Section 17, if upon the completion of the application of assets as prescribed in the Pension Benefits Act, 1987 any such assets remain unapplied *the balance of unused assets shall upon the termination or winding up of the Plan, as directed by the Company, be paid to the Company or be allocated to each Member's Individual Account in pro-*

portion to the relationship each such Individual Account bears to the total of all Individual Accounts or both, subject to the prior written consent of the Pension Commission of Ontario and Revenue Canada, Taxation. A Member who is in receipt of annuity payments will not receive an allocation.

Notwithstanding the provisions of this Section, upon termination or winding up of the Plan in whole or in part, the assets of the Plan shall be applied, to the extent not already applied, towards the provision of the pension benefits prescribed in the Pension Benefits Act, 1987 and no assets of the Plan shall be applied toward the provision of any benefit until The Pension Commission of Ontario has approved the report filed as prescribed in the Act except those assets required to make periodic payments to Members and refund Member's contributions to Members in accordance with the Plan. For those Member's affected by the termination, the Member's Individual Account balance is unconditionally vested in him.

On Plan termination the Member's Individual Account may be taken in cash, transferred or used to purchase an annuity as provided and in accordance with the provisions of Section 11. (emphasis added)

Consent

Clause 7a (2) (b) of the Regulations, as set out above, provides for payment out of surplus on wind up to employers with the written agreement of the employer, at least two-thirds of the members, and "such number of former members and other persons who are entitled to payments under the pension plan on the date of wind up as the Commission considers appropriate".

On the date of wind up there were 28 active members and 28 deferred members. In addition, there were 57 "others", that is, persons who were members of the Plan within 6 years prior to the date of wind up but who were not entitled to payments under the Plan at the date of wind up because their benefits had been previously terminated and transferred out of the fund or because they had been terminated with no vested benefits. The category of "others" also included two retirees for whom annuities had been purchased.

26 of the 28 active members consented to the application; 28 of 28 deferred members consented. But, of the category of "others", only 2 of 57 consented, those 2 being the retired members. Many of those within the "other" category wrote to oppose the application. The gist of their representations is given in the immediately following section.

The Applicant contends that, according to the wording of clause 7a (2) (b) of the Regulation, there is no need to have the consent of anyone in the "other" category. That may be the case. The Commission did not have the benefit of legal argument on this point as all parties were unrepresented; in the absence of legal argument on the point, which is largely if not wholly one of interpretation of a provision in a regulation which has never been judicially considered, we decline to decide the issue as the application can be decided on other grounds.

We would, however, say this about the consents. The notices that generated the consents cause us some concern. Both notices refer to "deteriorating economic conditions" that put the Applicant "in financial jeopardy". In essence, the notices suggest to the active members of the Plan that their jobs could be in jeopardy if they do not consent to the application. Such a statement could cause concern to those in the deferred category, as well, as the security of their pensions could be jeopardised if the Applicant went out of business. Although the notices urged members to seek independent legal advice before signing the consent form, we feel that does not fully counteract the effects of such statements.

Both the common law and equity have always looked behind the form of a consent, to its substance, to ensure that the consent is fully informed and freely given. One has only to look at the recent cases involving undue influence and the emerging law of economic duress to realize that this concern with the validity of consent continues unabated. While we do not suggest that the consents in this application were exacted through either undue influence or economic duress, we would caution applicants to consider the imbalance in bargaining power that exists between them and Plan members in recessionary times when wording notices of this sort. It is not idle speculation that suggests the following scenario: an employee consents to an application by the employer for surplus withdrawal, thinking that his or her job is secure.

If the company shortly thereafter closes down operations, that same employee may very well complain to the Commission that claims to surplus were not made because of implied or express promises of job security. If that employee then take steps to avoid the “contract” (i.e. the foregoing of a claim to surplus in exchange for a continuation of employment) there will be a very real question of economic duress and, possibly, undue influence. This type of problem would only serve to exacerbate the difficulties surrounding surplus applications and should be avoided, if at all possible. As a result, we would caution applicants to take care in the drafting of notices to ensure that concerns of this sort are minimized.

The representations

Representations were received by the Commission, pursuant to subsection 78(3), from a number of persons in the “other” category. To avoid confusion, representations made pursuant to subs. 78(3) will be referred to as letters to the Commission. Of the letters which did more than simply oppose the application, most were consistent in asserting that the Applicant, in the person of its former president, William Saynor, or other company officers represented that it was “matching” member contributions, dollar for dollar, and that all funds in the pension plan belonged to the Plan members. These representations were purportedly made in staff meetings, private meetings, and in private conversations. Many of the letters recited similar circumstances. That is, that the Plan member would approach a senior corporate officer to request withdrawal of his or her contributions to the Plan, prior to the funds vesting. The reasons for needing the funds included paying down of mortgages when the rates were high and for contributions to RRSPs. See, for example, the letter dated August 24, 1992 from Ms. Irene Watt to the Commission Registrar which recites that Ms. Watt approached Mr Saynor regarding a withdrawal from her as yet unvested pension balance in order to pay down her mortgage. At that time, Mr Saynor declined to authorize such a withdrawal citing the fact that Ms Watt would then be “withdrawing money that SVI had contributed on her behalf”. There were many other letters in which the same representations were allegedly made.

We accept that the letters are accurate and that the representations were made to Plan members. Indeed, we do not understand the Applicant to deny that such representations were made. Rather, it seems to be the Applicant’s position that as the representations were made by former company officers and, as they conflicted with the terms of the Plan documentation, they are of no effect. Their legal effect, if any, as will be seen, lies in the doctrine of promissory estoppel.

The issues

Assuming that the Applicant has satisfied the requirements of clause 7a(1)(b) of the Regulation, it must go on to demonstrate that it has satisfied the requirements of subsection 79(3) of the Act as well.

The approved wind up report leads us to conclude that clauses 79(3) (a) and (c) have been met. Clause 79(3)(d) also appears to have been satisfied. But has the Applicant established that “the pension plan provides for payment of surplus to the employer on the wind up of the pension plan”, as required by clause 79(3)(b) of the Act?

The Applicant contends that section 18 of the final Plan text and section 15 of the predecessor texts meet the requirement. The issue thus resolves itself into a question of whether the Applicant can rely on the terms of the Plan documents, which provide for the return of surplus to it, or whether it is estopped from relying upon the strict terms of the Plan because of the oral representations made to Plan members.

If the answer to the first issue is that the terms of the Plan documents are *prima facie* operative, a second issue arises. This issue centres about the generation of the surplus. If the bulk of contributions to the pension fund was from Plan members, arguably surplus would be largely attributable to those member contributions. It seems manifestly unfair that member contributions could be collected, earn investment income and then only a fraction of the moneys be returned to the very people who contributed it. Thus, the second issue is whether member contributions were largely responsible for generation of the surplus and, if so, whether the terms of the Plan documentation are binding in such a situation.

Issue #1 Promissory estoppel

Promissory Estoppel is an equitable doctrine which involves a promise despite an absence of consideration. The modern concept of promissory estoppel stems from *Hughes v. Metro Railway Co.*² where Lord Cairns stated

(I)t is the first principle upon which all Courts of Equity proceed that if parties who have entered into definite and distinct terms involving certain legal results - certain penalties or legal forfeiture - afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who might otherwise have enforced those rights will not be allowed to enforce them where it would be inequitable, having regard to the dealings which have taken place between the parties.

The doctrine of promissory estoppel, as defined by case law, has three essential elements.³ First, a legal relationship must exist between the parties at the time that the representation on which the estoppel is founded was made. Second, there must be a clear promise or representation made by the party against whom the estoppel is being claimed, establishing the party's intent to be bound by what it has said. Or, as was said by the Supreme Court of Canada in *Engineered Homes Ltd. v. Mason*⁴: "There must be evidence from which it can be inferred that the first party intended that the legal relations created by the contract would be altered". Third, the party who is raising the estoppel must have relied, to his or her detriment, upon the representations made by the party against whom the estoppel is being claimed. Additionally, as is the case with any equitable doctrine, the party raising the estoppel must come with clean hands.

It seems clear that at the time that the representations were made, a legal relationship existed between the parties. The representations were made by the then president of the Applicant (or some other senior corporate officer or both) to company employees who were Plan members. One legal relationship arose from the employment contract between the parties; another through the contract established to provide pension benefits to the employees between the Applicant as Plan administrator and the employees as members of the Plan. Thus, the first element necessary to sustain a claim of promissory estoppel is satisfied as a legal relationship was present between the parties at the time that the representation was made.

The second element to be established is that an unambiguous representation was made from which it can be inferred that the promisor intended to alter legal relations. The first Plan text required no fixed employer contributions and can be construed as permitting surplus reversion to the Company. The Applicant must have been aware of the Plan provisions even at the time it made the representation that it was matching the member contributions dollar for dollar as it was not making such contributions. That representation plus the representation made by the Applicant that all member contributions and all "matching employer" contributions would be held for the benefit of the members meet the requirements of that second element. The representations were clear and unambiguous and it can be inferred that the Applicant intended such promises to have legal effect; that is, it can be inferred that the Applicant intended the promises ("representations") to alter the legal positions created by the strict terms of the Plan texts.

A mutual mistake as to the state of the legal relationship between the parties will not satisfy the reliance requirement. There can be no promissory estoppel when both parties are not aware of circumstances that could lead to estoppel at the time the representations were made, or are mistaken as to what those circumstances are.⁵ The Applicant was not making contributions so it must have known it did not have that obligation; moreover, there was no evidence that the Applicant was mistaken as to its understanding of its rights with respect to surplus reversion.

² (1877), 2 A.C. 438 (H.L.).

³ See Fridman, G.H.L., *The Law of Contract*, 2nd ed., (Toronto: Carswell, 1986).

⁴ (1983), 146 D.L.R. (3d) 577 at 581 (S.C.C.).

⁵ *Sohio Petroleum Co. et al v. Weyburn Security Co. Ltd.* (1970), 74 W.W.R. 626 (S.C.C.).

Case law suggests that reliance alone is not sufficient; the party alleging estoppel must have relied on the representation to his or her detriment.⁶ Again, we find that reliance is established in the letters from former members. We accept their evidence that they did not withdraw their contributions to the Plan, at a time when they could have because the funds were not vested, because of the representations made to them. That constitutes reliance. The detriment is so obvious it requires little comment. If the member had withdrawn his or her contributions and paid down a mortgage, for example, all the interest saved on the reduced mortgage principle would accrue to the benefit of the member. Because the moneys were left in the Plan, investment earnings on that money accrued to the Plan. Similarly, those members who wished to use unvested pension moneys to contribute to RRSPs would have had tax savings, an actual dollar benefit to them. Examples of these forms of reliance to the detriment of the person can be found in a number of letters to the Commission including the letter from Ms. Watt in which she states that she had wanted to pay down her mortgage in order to lessen the effect of high mortgage rates and the letter from Ms. Catherine Adams indicating that she would have invested in an RRSP if she had been able to access her contributions.

Since promissory estoppel is an equitable concept, the party who is raising estoppel must come with clean hands. For example, the promise or representation on which the party raising estoppel relies, upon must not have been exacted by intimidation or duress. There is nothing in the evidence to suggest any lack of clean hands by the members to whom the representations were made nor does the Applicant suggest anything to that effect.

We find that the elements necessary to establish promissory estoppel exist. Thus, the Applicant is estopped from relying upon the strict terms of the Plan in relation to surplus reversion. As it is unable to rely on section 18 of the final Plan text, it has failed to meet the requirements of clause 79(3)(b).

Issue #2 Surplus attribution

In light of our answer to the first issue, we need not address the second issue. For that we are thankful as the data which was presented was woefully inadequate to make such a determination. For example, in response to the Chair's letter requesting information on contributions, we were given a chart in which the Applicant's contributions for the years 1988 to wind up (1992) were shown as approximately \$156,000. Yet the application itself stated that the Applicant had not contributed a cent of its own money to the Plan from the day of conversion in 1988. We find it hard to conceive of treating contribution holidays based on accumulated surplus as "contributions" by the Applicant.

The information regarding contributions by the Applicant and members before 1988 is also contradictory. But this much is known. At the time of plan conversion in 1988, there was a surplus of \$1.1 million. No contributions were made by the Applicant or members thereafter. The growth in surplus after Plan conversion was attributable to investment earnings. Therefore, surplus is attributable to contributions pre-1988. Based on the contractual obligations and the evidence, it would seem that the bulk of the contributions came from the members. However, the information we received was inadequate to conclusively determine that point.

As we are unable to determine, with any confidence, the respective amounts of employer and employee contributions, we will not proceed to deal with the difficult questions of law that would arise if it were determined that the surplus was largely attributable to employee contributions but the terms of the Plan stipulated that surplus was to go to the employer.

⁶ See *Fort Frances v. Boise Cascade Canada Ltd.* [1983], 1 S.C.R. 171 (S.C.C) where the court disallowed a claim of promissory estoppel against a corporate officer who had stated that the town was entitled to an unlimited power supply because, inter alia, the representation had not been relied upon by the town to its detriment.

Conclusion

Without in any way intending to be critical of the role of the Plan actuary in this matter, it must be pointed out that this application would have benefited from legal argument. There were complicated questions of evidence and law which had to be satisfactorily resolved before the Commission could find that the requirements of subsection 79(3) had been met.⁷

The onus was upon the Applicant to demonstrate that “the pension plan provides for payment of surplus to the employer on wind up of the pension plan”. That onus has not been discharged and the application must therefore fail. In deciding this matter, the Commission was aware of the pressing financial considerations that underlay the application. Those considerations could not blind the Commission to its fiduciary role, however. In the end, the legal questions as to the entitlement to surplus were not resolved to our satisfaction and the application could not succeed.

DATED at Toronto this 22nd Day of October, 1992.

M. Joseph Regan, Chair
Eileen E. Gillese
Donald Collins
Monica Townson

* * *

⁷ There was an opinion letter from counsel attached to the application. However, it spoke only to the issue of entitlement based on the Plan provisions and expressly stated that its opinion was based on the assumption that “No information concerning the Plan has been provided to the employees which is at variance with the Plan Documents (as defined below)”.

Contacts For PCO Enquiries

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Contacts For Plan Related Enquiries:

1. SECTOR ALLOCATIONS – (At least one plan with 250 or more members)

Sectors	Pension Officer		Alternate	
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Food, Beverages, Textiles, Paper...	Jaan Pringi	314-0586	John Staric	314- 0596
Rubber, Plastics, Transportation Equipment	Larry Martello	314-0587	Mark Eagles	314- 0599
Printing, Primary Metals, Machinery...	Mark Henry	314-0584	Penny McLraith	314- 0594
Electrical, Non-Metallic, Chemicals...	David Kearney	314-0590	Natasha Vandenhoven	314- 0598

2. ALPHABETICAL ALLOCATIONS – Defined Benefit & Multi-Employer Plans (Plans with less than 250 members)

Alpha Range	Pension Officer		Alternate	
A -BRI	David Allan	314-0612	Elizabeth Addo	314- 0607
BRO -COM	Steve Young	314-0646	Brigitte Khan	314- 0640
CON -EZZ	Jules Huot	314-0613	Claude De Souza	314- 0608
F -HAZ	Larry Murray	314-0644	Merle Corbie	314- 0637
HEA -KMZ	William Qualtrough	314-0641	Lynn Barron	314- 0639
KNA -MOQ	Elizabeth Carter	314-0604	Wynnell De Landro	314- 0603
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POL -SHE	Maureen Barber	314-0645	Debra Bain	314- 0638
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TORR -*	John Graham	314-0647	Brigitte Khan	314- 0640

*Companies with numeric-alphabetical names.

3. ALPHABETICAL ALLOCATIONS – Defined Contributions Plans

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Canadian-COK		Margaret Fennell	314-0600	Daphne Ludgate	314- 0592
COL	-DIL	Claude De Souza	314-0608	Jules Huot	314- 0613
DIM	-FLO	Elizabeth Addo	314-0607	David Allan	314- 0612
FLU	-HAL	Alain Malaket	314-0609	Rosemine Jiwa-Jutha	314- 0611
HAM	-JAL	Brigitte Khan	314-0640	John Graham	314- 0647
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RAM	-SHA	John Staric	314-0596	Jaan Pringi	314- 0586
SHE	-THA	Merle Corbie	314-0637	Larry Murray	314- 0644
THE	-VUL	Lynn Barron	314-0639	William Qualtrough	314- 0641
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*Companies with numeric-alphabetical names.

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The material in this issue of the Bulletin has been prepared by the PCO to provide general information. The information contained here should not be construed as legal advice. The Pension Benefits Act, RSO 1990 c.P.8, the Regulation (as amended), terms of a pension plan, and the policies and practices of the PCO, as they may be from time to time, should be considered to determine specific legal and legislative requirements.

THE PENSION COMMISSION OF ONTARIO

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BULLETIN

March, 1993

Vol. 3, Issue 4



Ontario's LIF Option and Revenue Canada

HIGHLIGHTS

AN ARTICLE APPEARED

in the December 1992 issue of the Bulletin on the Ontario Life Income Fund (the "LIF"). The opening statement cautioned that some of the information contained in the article was subject to proposed amendments to the Income Tax Act (Canada), (the "ITA"). This article provides background information concerning the proposed amendments to the ITA Regulation and their potential effect on registered pension plans.

Subsections 147.3 (1) and (4) of the ITA provide the authority to transfer the value of a benefit from a registered pension plan to another registered plan or retirement savings vehicle, such as an RRSP, on a tax-exempt basis. Currently, neither subsection permits the direct tax-free transfer of the value of the benefit from a registered pension plan to a Registered Retirement Income Fund (RRIF). Under Revenue Canada rules, Ontario's LIF is simply a RRIF that reflects the requirements of the ITA and also, the requirements of the Regulation under the PBA. The federal Minister of Finance has released a draft of the proposed amendments that will be in effect when the change to the Regulation is made.

Ontario's LIF Regulation established the authority for a plan administrator to provide terminating members, whose age qualifies them for a LIF purchase, with an option to elect to transfer the value of a locked-in benefit from a registered pension plan to a LIF. However, a direct transfer cannot be processed until proposed changes to the ITA Regulation are made. In addition, each pen-

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sion plan must provide for, or be amended to provide for, a direct tax-free transfer to a LIF.

Revenue Canada has indicated that terms in pension plans such as "...amounts may be transferred to another plan ..." would be sufficient to allow for the transfer to a LIF. Plans containing language that explicitly refers to "...another registered pension plan or RRSP", must be amended to add a specific reference to a RRIF/LIF. Generally, the portability provisions in most plan documents have been written to refer explicitly to a registered pension plan or an RRSP and therefore, it is expected that most pension plans must be amended.

Assuming that the ITA Regulation is amended to allow a direct tax-free transfer to a RRIF/LIF, a plan administrator should not make the transfer unless the plan provides for it in language acceptable to Revenue Canada. If such a transfer does occur in the absence of permissive language in the plan, the registration of the pension plan would be revocable under the ITA.

Until the ITA Regulation is amended, a direct tax-free transfer from a pension plan to a RRIF/LIF is not available to terminating plan members. In the meantime, however, a LIF may be accessed by indirect transfer to a locked-in RRSP. It will then be possible to make a direct tax-free transfer from the locked-in RRSP to a LIF. Former plan members who want to begin receiving retirement income without using the funds in their locked-in RRSP to purchase an annuity now have another option available to them, as long as their age qualifies them to purchase a LIF.

Please note that where the terms "value of benefits" or "benefit value" are used they include commuted values transferred from defined benefit plans and contributions, with interest, transferred from defined contribution plans.

Compliance With Actuarial Professional Standards

The following material is based on a speech given by Teck Go, Director of Actuarial Services to the Canadian Institute of Actuaries (CIA) annual meeting held on November 19 and 20 1992 in Quebec City.

Mr. Go opened by stating that, in general, the actuarial profession has a good record of compliance with professional standards and pension law. He went on to describe some examples of non-compliance with professional standards that

are cause for concern. The synopsis below focusses on non-compliance issues.

Until August 1991, all actuarial reports were required to be reviewed in the first instance by pension officers. Any suspected problems were referred to actuarial staff for further review. Since August 1991 all funding reports have been reviewed by actuarial staff. As a result of this procedural change, more non-compliance cases have been identified.

Non-compliance issues

The most serious non-compliance problems are:

- the omission of significant benefits from the valuation; and
- inappropriate actuarial assumptions.

The most widespread non-compliance problems are:

- failure to comply with professional requirements of certification; and
- failure to meet disclosure requirements.

Omission of significant benefits

Staff have found several cases of this type over the past few years. Generally they arise in a funding report or in a determination of the commuted values of benefits in a wind-up report. Since this problem is not easy to detect, the fact that a number of cases have come to light suggests that the problem could be more widespread than previously believed.

This problem can take two forms:

- 1) the report lists only the benefits used in the valuation

The problem is discovered when comparisons are made with the plan text.

- 2) the report lists all the benefits under the plan; however, a review indicates that the commuted values of benefits cannot be reproduced.

When PCO staff make enquiries, the actuary discloses that not all benefits were included in the valuation.

Use of inappropriate actuarial assumptions

Aggressive economic assumptions are not necessarily a major problem, but we have seen cases with high enough interest rates to be cause for concern. Among the more extreme, there was a case of a going concern valuation for a flat benefit plan using an interest rate of over 10 per cent for the first five years, a slightly lower rate for the next 10 years or more, and an ultimate rate of 7 per cent. As well there are more than a few plans that use a 9.5 per cent valuation interest rate without a drop-off period. This is one area where most

regulators believe better professional standards are required.

Unreasonable demographic assumptions are often a greater concern than aggressive economic assumptions. This is especially true for flat benefit plans with generous early retirement provisions.

Some time ago a valuation model was developed for various types of flat benefit plans by PCO staff. It demonstrated that a change in the interest rate of 1 per cent typically changes the liability of a flat benefit plan by a factor of a few per cent. However, changes to early retirement assumptions may change the liabilities by a factor of many times.

The implications are evident particularly in relation to flat benefit plans with very generous early retirement provisions, such as an unreduced pension with a bridging benefit after 30 years of service. Many such plans are valued using the assumption that all members will retire at age 64 or 65. Most valuations provide no gain and loss analysis at all. Of those that do include a gain and loss analysis, many show significant experience losses on retirement. Yet in spite of consistent losses, the demographic assumptions are not changed.

One case shows going concern liabilities of approximately \$50 million but the plan has had experience losses over a two year period of over \$10 million.

There is also widespread non-compliance with professional requirements of certification and disclosure. This problem occurs frequently.

Professional requirements of certification

For years the PCO has received reports that are not properly certified. Originally they were considered to be minor, unintentional oversights on the part of the actuary, and usually no action was taken unless there were other problems related to the report. Now it seems the problem is more serious than previously thought.

There have been instances where we have approached the actuary with concerns after reviewing a report that was not properly certified. A new report would then arrive with proper certification. Frequently, that new report would contain other major changes not related to any of the concerns that had been raised originally. As well, the financial results changed significantly from the original document.

On such occasions, it is difficult to construe the original lack of certification to be unintentional.

Disclosure

The professional (CIA) requirement on disclosure is quite clear. It says:

7.01 Report Contents

The report on the valuation of a pension plan prepared by an actuary should contain information which will be sufficient to permit another actuary to make an objective appraisal of the valuation.

In our experience, the amount of disclosure in reports varies. It is not unusual to receive a mere three page partial wind-up report involving hundreds of members and millions of dollars in assets.

Information frequently missing from funding reports include:

- detailed description of the actuarial cost method used (especially if non-standard elements are included);
- detailed description of the asset valuation method used;
- disclosure of the membership data (such as quinquennial age/service distributions); and
- description of the benefits being valued.

Other issues: gain and loss analysis

Another significant problem is the failure of many reports to include a gain and loss analysis. When they are included, the manner in which these analyses are performed is questionable. Even though it is not necessary to apply the same rigorous standard of analyses for all pension plans, professional standards require that a proper gain and loss analysis be performed.

As a pension regulator we take the position that a proper gain and loss analysis is a necessary and reasonable standard of analysis, especially for the larger plans.

Other issues: solvency valuations

There are extensive problems related to solvency valuations. We recently sampled about fifteen solvency valuations to assess their acceptability. In our opinion, only two or three met professional requirements. The most common problem is the failure to describe the benefits being valued.

A serious and common problem relates to flat benefit plans (large and small) where members with long service can receive unreduced benefits (together with a bridging benefit) at age 60 or 62. In some cases, the plan would show a small deficit or surplus on a going concern valuation basis using questionable early retirement assumptions. In many of these cases the actuary certified that there was no solvency deficiency and, did not provide any valuation details. The same problem exists for some career average plans.

Solvency valuation is a relatively new requirement and some actuaries may not be totally familiar with the valuation techniques. Even so, under certain circumstances, professional judgement should tell you that it is insufficient simply to make a statement that there is no solvency deficiency. For the benefit of readers of the actuarial report and in order that it be meaningful, a detailed description should be included if a solvency valuation was performed.

Other issues: wind-up reports

Unlike the reviews of triennial valuations, which are handled exclusively by the Actuarial Services Branch, wind-up reports are reviewed by the Pension Plans Branch and are referred to us when problems are detected.

The most common problem encountered in wind-up reports is the abuse of the term *CIA minimum transfer values*, and the most serious problem again, is the fact that benefits are not detailed or valued.

It is not unusual in wind-up reports for the statement by the actuary to say that the commuted values are calculated in accordance with CIA Recommendations for the Minimum Transfer Values of Pensions (effective November 14, 1988). Yet an examination reveals that the assumptions used are not consistent with these Recommendations.

The problems related to proper certification and disclosure for triennial valuations are even more serious in wind-up reports. In some instances, actuaries have submitted reports without professional certification or any conformation statement as required by the CIA Recommendations for Valuation of Pension Plans (June, 1981).

The professional requirement on disclosure is frequently not met. For example, in written response to a Pension Officer regarding benefits being valued, the actuary stated "there is no need to describe the benefits being valued in the actuarial report because they can be found in the plan text".

Furthermore, wind-up reports often fail to provide enough detail to assess and estimate the reasonableness of the commuted values.

In closing, it should not be construed from this discussion that these examples reflect the majority of the reports filed with the PCO. Certainly most actuaries comply fully with professional standards and meet statutory requirements. Unfortunately, however, the problems identified are more extensive than most members of the profession might expect.

Perhaps the problem has been aggravated by the fact that when problems have been detected the PCO traditionally has approached actuaries first. There are two disadvantages to

continuing this practice. Because of the follow-up, some actuaries have lacked the incentive to file properly the first time. The other disadvantage is that time is wasted which in turn slows processing.

Actuarial Reports Submitted to the CIA for Review

Recently the CIA approached pension regulators about referring non-compliance cases to the Institute for review.

In future, the PCO may submit a report - which in its view is not in compliance with professional standards - to the CIA directly, without first discussing the issues in the report with the plan actuary. Reports may also be referred to the CIA for guidance where there is uncertainty as to whether professional standards have been met.

As measures are taken to improve professional standards and to foster closer co-operation between pension regulators and the professional body, it is hoped that these non-compliance problems can be eliminated entirely.

Highlights from Ontario Regulation 712/92

Regulation to amend Regulation 909 of Revised Regulation of Ontario 1990 concerning Solvency Valuation and Pension Benefits Guarantee Fund (PBGF) Coverage

ON NOVEMBER 26, 1992 the Ministry of Financial Institutions announced changes to Regulation 909 under the PBA affecting solvency funding and the PBGF. These changes, originally announced on December 18, 1991, were made following consultation with stakeholders, the actuarial community and pension professionals. The changes took effect on November 26, 1992.

As related policies and procedures are developed, they will be disseminated to the industry and published in the *PCO Bulletin*. An information session will be held when policies and procedures are developed. If your organization was not represented at the information session held on January 20, 1993 and you wish to attend any future sessions, please contact Anna Montenegro at (416) 314-0559 or fax (416) 314-0564.

I Solvency Funding

Under the new rules going concern funding is no longer dependent on solvency funding. Under the previous Regulation, going concern special payments had to be adjusted when new solvency payments were established. Now it is no longer necessary to adjust going concern special payments when a new series of solvency special payments is established.

II Solvency Valuation Methodology

The methodology of solvency valuation and funding is revised. Many of these revisions were made through clarification of terms.

Clarification of Terminology

Initial valuation date means the valuation date of the first report filed or submitted under section 3, 4, 13 or 14 with a valuation date after the Regulation date (November 26, 1992).

Solvency deficiency = (solvency liabilities + solvency liability adjustment + prior year credit balance) – (solvency assets + solvency asset adjustment).

Solvency assets represents the market value of invested assets excluding the value of qualifying annuity contracts.

Solvency asset adjustment includes the averaging of the market value of assets, as well as the present value of the special payments, including all special payments scheduled for payment within 5 years (or before 1/1/2003 if longer).

Solvency liabilities now are defined so that liabilities related to certain benefit provisions can be excluded provided that the exclusions are disclosed in the report.

Solvency liability adjustment is the adjustment for using an averaged interest rate. Although it is not specifically addressed in the Regulation, the methods of averaging assets and liabilities must be consistent.

Liabilities Related to Certain Benefit Provisions may be excluded from Solvency Liabilities

- An employer may elect to exclude the pre-funding of existing plant closure benefits and permanent layoff benefits ("PCB"s and "PLOB"s). A formal election to exclude these benefits must be made by the employer.
 - Election must be made by the due date of the first report after the Regulation date - ss. 5(19).
 - If the election is made, an actuarial valuation must be filed annually - ss.14(3).

- If an employer does not elect to exclude these benefits, the benefits must be funded - ss. 5(18).
- An employer may rescind the election, but once rescinded, is not permitted to re-elect - ss. 5(20) & (22).
- Pension plans that do not provide PCBs or PLOBs as of the Regulation date cannot make an election to exclude these benefits from pre-funding - ss. 5(18).
- The Regulation excludes the value related to *qualifying annuity contracts* from the calculation of solvency assets and solvency liabilities.
 - *Qualifying annuity contracts* are annuity contracts issued before 1/1/88 which provide only for benefits purchased before 1/1/93, unless they provide for redistribution of benefits on wind up.
- Other benefits may be excluded from the calculation of solvency liabilities, as indicated in the Clarification of Terms section. A formal election is not required to exclude these benefits, but the report must disclose the benefits that are excluded from the calculation of solvency liabilities - cl. 14(8)(c).
 - "Grow-in" to consent benefits and special allowances can be excluded. Consent benefits and special allowances for which members have met all other eligibility requirements at the valuation date cannot be excluded.
 - Future pension benefit increases, such as indexing or step increases required under the pension plan, do not have to be pre-funded on a solvency basis.
 - Early retirement windows available for less than one year, that have not been elected, are not required to be included in determining solvency liabilities.

III Reduction of Required Employer Contributions

- The concept of *prior year credit balance* was introduced to regulate the use of excess contributions.
 - The *prior year credit balance* is determined as follows for the first report after the Regulation date:
prior year credit balance = prepayments + initial solvency balance (if positive)
and for subsequent reports:
prior year credit balance = (previous prior year credit balance) + (total employer contribution made after last valuation date but

before current valuation date) – (aggregate employer contribution required under section 4).

- *Prepayments* are the excess going concern special payments as determined under the rules in effect before November 26, 1992.
- *Initial solvency balance* = (the aggregate special payments paid by the employer with respect to any solvency deficiency arising before November 26, 1992) – (the aggregate special payments required to be paid with respect to any solvency deficiency arising before November 26, 1992 but calculated on the basis of the new rules).
- If the plan has a *prior year credit balance*, the employer may apply it to reduce the required employer contributions for both normal costs and special payments.
- Special payments included in the initial solvency balance cannot be included in prepayments.

IV The new solvency valuation rules are applicable as if they were effective on 1/1/88. Valuation and reporting requirements are revised accordingly.

All solvency deficiencies must be redetermined in accordance with the new Regulation except where the employer elects not to redetermine.

Cases Where Solvency Deficiencies are to be Redetermined

- Where solvency deficiencies are to be redetermined, the term *solvency liabilities* should be applied as described in the Clarification of Terms section.
- The Regulation provides that all solvency deficiencies arising before 12/31/97 can be amortized over a period ending on 12/31/2002 - cl. 5(1)(c), (d) & (e).
- A report must be prepared with a valuation date not later than the last day of the fiscal year of the plan in which the Regulation date falls (for most plans this is December 31, 1992) - ss. 5(6).
- This report must be filed within nine months of the valuation date and must contain, in addition to the usual information contained in a valuation report, the following information - ss. 5(7):
 - those items being excluded from solvency liabilities
 - the prior year credit balance

- the amount of each redetermined solvency deficiency
- the special payments, and
- the initial solvency balance.

Cases Where an Employer Elects Not to Redetermine

- An employer may elect not to redetermine solvency deficiencies if - ss. 5(9):
 - all reports due before the Regulation date were filed
 - the filed reports complied with all requirements in effect as of the valuation date of the report
 - all required payments were made
 - the actuary has signed a statement that prior reports were prepared in accordance with the requirements in effect on the valuation date of the report, and
 - the plan administrator has signed a statement that prior reports have been filed and all required payments have been made.
- If this election is made, the Regulation still permits the previously disclosed solvency deficiencies to be amortized over a period ending on 12/31/2002 - cl. 5(11)(b) and 5(1)(d).
- A report must be filed within nine months of the last day of the fiscal year of the plan in which the Regulation date falls - ss. 5(11).
- This report must include the following items and information - ss. 5(11):
 - the statements of the actuary and plan administrator required under ss. 5(9)
 - the new special payment schedule
 - the initial solvency balance at the Regulation date, and
 - the prior year credit balance at the Regulation date.

Other Related Matters

- Where there is a negative initial solvency balance, it must be paid - ss. 5(25).
- A new mechanism was introduced in cases where a *solvency excess* exists, in other words, where solvency assets are greater than solvency liabilities - ss. 5(17):

Solvency excess (must be a positive value) means (solvency assets + solvency asset adjustment) – (solvency liabilities + solvency liability adjustment + prior year credit balance).

- If the solvency excess is greater than the present value of special payments under cl. 5(1)(c), (d) and (e) then the special payments shall be reduced to zero.
- If the solvency excess is less than the present value of the special payments under cl. 5(1)(c), (d) and (e) then the amortization period or periods for the special payment shall be reduced so the solvency excess is reduced to zero. The level of payments cannot be reduced.

V Actuarial reports must be submitted at least every three years. However, under certain circumstances, annual filing now is mandatory

- Plans that are less than 80 per cent funded on a solvency basis, or that have a solvency shortfall of \$5 million or more and are less than 90 per cent funded, are required to file solvency valuations annually - ss. 14(2) & (3).

For this purpose, both the funded ratio and the solvency shortfall are determined by comparing the solvency liability and solvency assets - ss. 14(2).

- Annual reports are required when PCBs and PLOBs are excluded from solvency liabilities - ss. 14(2) & (3).
- Plans established for less than three years are exempt from the annual filing requirement - ss. 14(4).
- Ss. 3(1) is revised to clarify that if a solvency deficiency is created or changed as a result of a plan amendment, an interim report must be filed.

VI Certain changes relate to the payment of termination benefits

- *Transfer ratio* = {solvency assets – the lesser of (prior year credit balance, sum of all required normal costs and special payments until next valuation date)} ÷ solvency liabilities.
- Where the transfer ratio drops below 0.9, or by more than 10 per cent, the transfer values can be paid out only with the approval of the Superintendent of Pensions - ss. 19(4) & (5).
- The plan administrator is required to notify the Superintendent if there is reason to believe the transfer ratio has dropped.
- On termination of employment, the value of benefits excluded from solvency funding may be paid out only if the sponsor provides for additional funding or

with the approval of the Superintendent - ss. 19(9) & (10).

The requirement also prevents the purchase of a guaranteed annuity contract when the benefits are not funded - ss. 19(9).

The requirement does not prevent the payment of benefits if the member elects to receive them in the form of periodic payments from the plan.

VII The Regulation also is amended to provide for changes related to Pension Benefits Guarantee Fund (PBGF) coverage and levies

- The following benefits are excluded from PBGF coverage:

- consent benefits, other than consent benefits for which the member has met all other eligibility conditions on the date of wind up
- special allowances, other than special allowances for which the member has met all eligibility conditions on the date of wind up
- benefit increases which become effective after the date of wind up, including indexation of benefits
- early retirement window benefits which are available for less than one year and have not been elected, and
- PCBs and PLOBs, other than those PCBs and PLOBs for which a member has met the age and service eligibility requirements.

- The PBGF assessment rate is changed:

Levy On Portion of PBGF Assessment Base

0.5%	up to 10% of PBGF liability
1.0%	10% to 20% of PBGF liability
1.5%	20% and over of PBGF liability

plus \$1 per Ontario plan beneficiary including actives, deferreds and all beneficiaries receiving benefits from the plan - cl. 37(4)(a)(i)(A) and ss. 37(5).

- *PBGF assessment base* = PBGF liabilities – (solvency assets × PBGF liabilities ÷ solvency liabilities).
- There is a cap of \$100 per Ontario beneficiary - cl. 37(4)(a)(i)(B).
- An additional 2 per cent levy applies on the solvency shortfall related to benefits excluded from solvency funding but covered by the PBGF - cl. 37(4)(a)(ii).
- There is an overall cap of \$4 million per pension plan - cl. 34(4)(b).

- Other changes to PBGF assessment include:
 - The assessment date is defined as 9 months after the fiscal year end - ss. 37(2).
 - New PBGF assessment rules apply to assessment dates after 12/31/92 - ss. 37(3).
 - Formerly, when an actuarial report was submitted late, the PBGF assessment was based on the previously submitted report. Under the new rules, the PBGF assessment is based on the report covering the time period for which the assessment is made - ss. 37(8).
 - If a revised report is filed at the request of the Superintendent, the assessment must be recalculated based on the revised report - ss. 37(9);
 - if the new assessment is higher, the difference must be paid within 60 days
 - if the new assessment is lower, the difference will be refunded.
 - In future years, PBGF levies may be reduced if the sponsor has made payments in excess of the required minimum between the date of the solvency valuation and the date the assessment is determined - ss. 37(12).
 - New plans are exempt from the PBGF assessment for three years - ss. 37(13).
 - The late payment interest charge on PBGF assessments is increased from prime (as of the assessment date) to prime plus 3 per cent - ss. 37(14).
 - A PBGF assessment of less than \$25 per plan is waived - ss. 37(16).

VIII An employer with plans whose total assets exceed \$500 million may elect to treat the plans as qualifying plans

- An employer whose pension plans have, in total, over \$500 million of assets and who elects to treat the plans as qualifying plans may elect to be exempt from solvency funding requirements - ss. 5.1(1) & (2).
- Qualifying plans are required to pay a PBGF assessment at a flat rate of 2.5 per cent, subject to a cap of \$5 million per plan - ss. 37(6).
- Where the assets of the qualifying plans of an employer fall below \$500 million, solvency funding must resume but PBGF assessments continue at 2.5 per cent - ss. 5.1(6) (7), (8) & (9).
- An employer with qualifying plans may rescind the election, but once the election

is rescinded, re-election for treatment as a qualifying plan is not permitted - ss. 5.1(3), (12) & (13).

- At wind up or partial wind up, a qualifying plan is required to fund any shortfall in one year instead of the usual five - ss. 35(4) & (5).
- A qualifying plan may elect to file one catch-up valuation report in lieu of the valuation reports required to be filed under the former regulation - s. 5.3.
- Qualifying plans that file a catch-up report also must file and pay a catch-up PBGF assessment in lieu of the PBGF assessment due under the former regulation - s. 5.4.

IX Other Regulation Changes

- The Superintendent of Pensions, with the approval of a majority of the Commission members, is empowered to direct an independent actuary to prepare and file a valuation report on behalf of a plan administrator if the valuation report is more than one year overdue and the Superintendent is of the opinion that a valuation is necessary to ensure that the plan is sufficiently funded - ss. 4(6) to (12).

The Superintendent can charge a fee to the plan administrator for the cost incurred in preparing this report.

- Section 7 is revised:
 - Ss. 7(3) now states - In any year for which no special payments are required to be made for a pension plan under section 5, an actuarial gain may be applied to reduce any employer contributions for normal costs.
 - Ss. 7(4) now states - In any year for which no special payments are required to be made for a pension plan under section 5, any actuarial gain not applied under subsection (1) or (3) may be applied to pay the annual assessment to the PBGF otherwise required under subsection 37(1) to be paid by the employer.
- Audited financial statements are now required only for those plans where the market value of assets is over \$3 million - ss. 76(2).
- Annual information returns for defined benefit plans are due within nine months of the fiscal year end of the plan. The six month period still applies for defined contribution plans - ss. 18(1).

Summary of Filing Requirements Under the Solvency Regulations

Type of Filing	Mandatory or Optional	Expected Number of Plans Affected	Valuation Date	Filing Due Date
Ss.5(5) Report to redetermine past solvency deficiencies	mandatory unless elected under 5(8)	technically all DB plans, probably a few hundred	fiscal year-end after Nov. 26, 92	9 months after valuation date
Ss.5(8) Statement that past solvency deficiencies will not be redetermined	optional	all DB plans affected, most expected to elect	fiscal year-end after Nov. 26, 92	9 months after valuation date
Ss.5(11) Report showing restated solvency payments, initial solvency balance and prior year credit balance	if election made under ss.5(8)	most pension plans	fiscal year-end after Nov. 26, 92	9 months after valuation date
Ss.5(18) Notice to exclude plant closure benefit from funding	optional	probably tens	n/a	before first funding report is filed
Ss.5(20) Notice to rescind election under Ss.5(18)	optional	?	n/a	n/a
Ss.5.1(1) Notice of election to be a qualifying plan	optional	very few	n/a	n/a
Ss.5.1(12) Notice of rescission of election of being a qualifying plan	optional	?	n/a	n/a
Ss.5.3(1) Initial special report for the qualifying plans in lieu of reports not filed	optional	very few	between Nov. 27, 91 and Nov. 26, 92	May 26, 93
Ss.18(1) Annual Information Return	mandatory	all DC plans	n/a	6 months after fiscal year-end
		all other plans	n/a	9 months after fiscal year-end
Ss.19(5.1) Basis of determining commuted value of benefits	if plan provides for transfer values higher than CIA minimum	probably very few	n/a	n/a

Regulations

Since late November 1992, five amendments to the Regulations were filed. Four of them are reprinted here for the convenience of readers. O. Reg. 712/92, the solvency and PBGF Regulation is not included due to its length. Copies of that Regulation may be obtained from PCO Reception - 9th Floor or, for mail requests contact Anna Montenegro at (416) 314- 0559. (The Solvency and PBGF Regulation was filed on November 26, 1992 and published in the Ontario Gazette, December 12, 1992 issue.)

Re: Superintendent May Charge A Fee for Valuation Report

Regulation to amend Ontario Regulation 678/90 made under the Interpretation Act

On November 26, 1992 O. Reg. 713/92 was filed amending Regulation 678/90. It was published in the Ontario Gazette, December 12, 1992 issue.

1. Regulation 678 of Revised Regulations of Ontario, 1990 is amended by adding the following section:

PENSION BENEFITS ACT

7. (1) Where the Superintendent causes work to be done on a report on a plan under section 4 of Regulation 909 of Revised Regulations of Ontario, 1990, as amended by Ontario Regulation 712/92, the Superintendent shall charge a fee, to be paid promptly by the administrator for the plan from the pension fund, equal to the cost of the actuarial services reasonably incurred by the Crown for work done on the report, excluding the cost of actuarial services of Crown employees.

(2) Subsection (1) applies whether or not the report is completed or submitted. O. Reg. 713/92, s. 1.

2. This Regulation comes into force on the 1st day of June, 1993.

Re: Extension of Deadlines

Regulation to amend Ontario Regulation 909/90 made under the Pension Benefits Act

On December 10, 1992 O. Reg. 755/92 was filed amending Regulation 909/90. It was published in the Ontario Gazette, December 26 issue.

1. Subsections 47(4) and (5) of Regulation 909 of Revised Regulations of Ontario, 1990, as remade by section 2 of Ontario Regulation 743/91, are revoked and the following substituted:

(4) Every employer who, on the 1st day of January, 1988, maintained a pension plan that provides defined benefits is exempt from subsection 19(1) of the *Pension Benefits Act*, 1987 for the period ending on the 31st day of December, 1993.

(5) The parties to a collective agreement or arbitration award governing a pension plan described in subsection 19(2) of the *Pension Benefits Act*, 1987 that provides defined benefits are exempt from that subsection for the period ending on the 31st day of December, 1993. O. Reg. 755/92, s. 1.

2. This Regulation comes into force on the 1st day of January, 1993.

Re: Plan Registration and Annual Filings - Fee Increases

Regulation to amend Ontario Regulation 909/90 made under the Pension Benefits Act

On December 17, 1992 O. Reg. 778/92 was filed amending Regulation 909/90. It was published in the Ontario Gazette, January 2, 1993 issue.

1. Subsections 2(1) and (2) of Regulation 909 of Revised Regulations of Ontario, 1990 are revoked and the following substituted:

(1) The application fee for registration of a pension plan that has members in Ontario or in a designated province is \$6.15 for each of those members.

(2) The application fee for registration of a pension plan administered by the Commission under an agreement with the Government of Canada under section 95 of the Act is \$6.15 per member. O. Reg. 778/92, s. 1.

2. Subsections 18(2) and (3) of the Regulation are revoked and the following substituted:

(2) The filing fee for an annual information return for a pension plan that has members in Ontario or in a designated province is \$6.15 for each of those members.

(3) The filing fee for an annual information return for a pension plan administered by the Commission under an agreement with the Government of Canada under section 95 of the Act is \$6.15 per member. O. Reg. 778/92, s. 2.

3. Section 18 of the Regulation, as it read immediately before the coming into force of this Regulation, continues to apply with respect to an annual information return respecting a fiscal year that ends on or after the 31st day of December, 1991 and before the 31st day of December, 1992.

Re: Ryerson Retirement Pension Plan

***Regulation to amend
Ontario Regulation 909/90 made
under the Pension Benefits Act***

On December 17, 1992 O. Reg. 779/92 was filed amending Regulation 909/90. It was published in the Ontario Gazette, January 2, 1993 issue.

1. Section 11 of Regulation 909 of Revised Regulations of Ontario, 1990 is amended by adding the following subsection:

(4) This section does not apply to the Ryerson Retirement Pension Plan of Ryerson Polytechnical Institute. O. Reg. 779/92, s. 1.

2. This Regulation comes into force on the 1st day of January, 1993.

***Update - Revised Regulations of
Ontario 1990***

The revised Regulations of Ontario 1990 (the "RRO") came into force on Monday, November 16, 1992. Regulation 909 is now the Regulation under the Pension Benefits Act (the "Act"). The RRO only contains regulations in force prior to January 1, 1991. Therefore, any amendment to the Regulation under the Act after December 31, 1990 is not included in the RRO, 1990. The amendments listed in the chart below are not included in Regulation 909 as printed in the RRO, 1990.

However, the *consolidated version of the Act and the RRO, 1990* including all amendments to the Regulation made to December 31, 1992 is expected to be published and available at Publications Ontario sometime after May 1, 1993.

Amendments not included in the RRO, 1990 – refer to the Table on page 12.

Notices

***Premier Bob Rae Announces
Government Reorganization***

ON FEBRUARY 3, 1993 the Premier announced extensive changes to the structure and organization of the Ontario Government. According to a news release, the reorganization will simplify and streamline the way government does business in Ontario and the way people do business with their government.

A new Ministry of Finance is established integrating the former ministries of Treasury and Economics, Revenue and Financial Institutions. Deputy Premier Floyd Laughren is the new Minister of Finance. The former Minister of Financial Institutions Brian Charlton, becomes Chair of Management Board which includes the former Ministry of Government Services.

The PCO, formerly an agency of the Ministry of Financial Institutions, will report to the Minister of Finance.

***Status of the Consolidation of the
Pension Benefits Act and the
Regulation***

The Registrar of Regulations confirmed that a consolidation of the PBA and Ontario Regulation 909/90 - including all amendments to the Regulation made to December 31, 1992 - is expected to be available at Publications Ontario sometime after May 1, 1993.

Please refer to the Regulations section in this issue for a full regulations update.

***Reminder to Report
Non-compliance to the
Superintendent of Pensions***

The Superintendent of Pensions wishes to remind plan administrators and their agents who are responsible for receiving contributions (usually trust companies or insurance companies) of the requirement under section 56 of the PBA to give written notice to the Superintendent of any overdue contribution to a pension plan within sixty days after the date on which the plan administrator or the agent first becomes aware of the failure to pay the contribution.

The Superintendent also wishes to remind auditors of the requirement under subsection 76(16) of Regulation 909 to report to the Superintendent any matter reported to a plan administrator

(continued on page 13)

Amendments not included in the RRO, 1990:

O. Reg. 402/91	re: AIR form	filed July 19, 1991; amending O. Reg. 909/90
O. Reg. 740/91	re: registration and AIR filing fees	filed December 16, 1991; amending O. Reg. 909/90
O. Reg. 743/91	re: surplus	filed December 18, 1991; amending O. Reg. 909/90
O. Reg. 760/91	re: Teachers' Pension Plan	filed December 20, 1991; amending O. Reg. 909/90

O. Reg. 69/92	re: Judges' Pension Plan	filed February 17, 1992; amending O. Reg. 909/90
O. Reg. 564/92	re: Life Income Fund	filed September 18, 1992; amending O. Reg. 909/90
O. Reg. 629/92	re: various housekeeping amendments	filed October 9, 1992; amending O. Reg. 909/90
O. Reg. 712/92	re: solvency and PBGF	filed November 26, 1992; <i>Ontario Gazette</i> , December 12, 1992; amending O. Reg. 909/90
O. Reg. 713/92	re: Superintendent's authority to charge fee for obtaining a valuation report under the Interpretation Act	filed November 26, 1992; <i>Ontario Gazette</i> , December 12, 1992; amending O. Reg. 678/90
O. Reg. 755/92	re: extension of deadlines to December 31, 1993	filed December 10, 1992; <i>Ontario Gazette</i> , December 26, 1992; amending O. Reg. 909/90
O. Reg. 778/92	re: registration and AIR filing fees	filed December 17, 1992; <i>Ontario Gazette</i> , January 2, 1993; amending O. Reg. 909/90
O. Reg. 779/92	re: Ryerson Pension Plan exemption	filed December 17, 1992; <i>Ontario Gazette</i> , January 2, 1993; amending O. Reg. 909/90

Readers should note that these amendments were revised recently according to the new numbering of O. Reg. 909/90 and published in a special edition of the *Ontario Gazette* on December 19, 1992.

All regulations filed in November and December 1992 (and any to be made thereafter) amending O. Reg. 909/90 are according to the numbering of O. Reg. 909/90.

tor under subsection 76(15) that, in the opinion of the auditor, is significant and has not been corrected within thirty days after the date that the matter was first reported to the plan administrator. Subsection 76(15) requires the auditor to report to the plan administrator immediately when, in the course of reporting on the financial statements, he or she becomes aware of circumstances that indicate that there has been or may have been a contravention of Part II of the Regulation.

The Superintendent may take steps to enforce these requirements where plan administrators, agents or auditors fail to comply.

Income Tax Act (Canada) Requirement to Attach Pensions in Pay

In cases where the Administrator of a pension plan complies with the requirement under section 224(1) of the Income Tax Act (ITA)(Canada), with respect to pensions in pay where Revenue Canada has issued a Requirement To Pay under the ITA, the position of PCO staff is not to take proceedings against an Administrator for an alleged breach of section 66 of the PBA.

Plan Registration and Annual Filings - Fee Increase Changes

On December 17, 1992 O. Reg. 778/92 (amending O. Reg. 909/90 to the PBA) was filed; it was published in the *Ontario Gazette* on January 2, 1993.

The regulation sets out the fees to be paid in respect of each member of a pension plan at the time a plan is registered, and annually thereafter upon filing the plan's Annual Information Return (AIR). It also indicates fees and filing date requirements.

Fees

The registration fee for new plans and subsequent annual filings is increased from \$6.00 to \$6.15 per member. This amounts to an overall increase of 2.5 per cent. Minimum and maximum total amounts payable remain unchanged: the minimum total amount payable is \$200 per plan; the maximum total amount payable is \$50,000 per plan.

The revised AIR fee is effective for plans filing an AIR with a fiscal year ending on or after December 31, 1992. Plan registrations made on or after December 17, 1992 are subject to the revised fee.

Pension plans with fewer than 33 active members assessed in Ontario and designated provinces and those with more than 8,130 active members assessed in Ontario and designated

provinces will not be affected by the increase since they are subject to the minimum and maximum payments respectively.

This new fee structure is in line with the current fee structure used for federally registered pension plans and those pension plans registered in the province of Quebec.

Please ensure that all annual filing fees are calculated in accordance with the revised fee structure and cheques are made payable to **The Treasurer of Ontario**. Please quote your plan registration number on the cheque.

You will note that printed AIRs supplied by the PCO make reference to certain sections of the PBA, 1987; users should read the section numbering in accordance with the PBA, 1990, as amended.

Solvency Regulation Impacts AIR Filings

O. Reg. 712/92 also impacts all pension plans with fiscal years ending on or after November 26, 1992.

New subsection 18(1) requires that Administrators of pension plans shall file the AIR required under section 20 of the PBA in the manner as described below for plans providing defined contribution benefits and any other plan.

Filing Date Requirements

In the case of plans providing only defined contribution benefits, the filing requirement and fees payable remains as not later than 6 months after the fiscal year end of the plan.

In the case of any other plan, the filing requirement and fees payable have been changed from 6 months to 9 months after the fiscal year end of the plan. For a summary of filing requirements under the Solvency/PBGF Regulations please refer to page 9.

Impact of Regulation on Financial Statement and SIP&G Filing Requirements

On October 9, 1992 O. Reg. 629/92 amending Regulation 909/90 was filed.

The regulation introduced new filing requirements at the effective date of plan wind up such that an Administrator is now required to prepare financial statements for the pension fund or plan at the effective date of plan wind up for the period from the most recent plan fiscal year end to the effective date. Furthermore, these financial statements must be filed with the PCO within six months after the effective date of plan wind up.

As well, the regulation requires the plan administrator to review the Statement of Investment Policies and Goals (SIP&G) and file any confirmations or amendments under section 64.

If applicable, the Administrator shall file any amendment to the SIP&G within ninety days after the adoption of the amendment.

Impact of Solvency Regulation on Financial Statement Filing Requirements

On November 26, 1992 O. Reg. 712/92 amending Regulation 909/90 was filed.

Under the former regulation, the threshold for requiring audited financial statements was \$1,000,000 in market value of assets or membership criteria of 50 or more members.

O. Reg. 712/92 changed that threshold requirement for plans to \$3,000,000 in market value of assets only. The membership criteria was eliminated to ease the financial and administrative burden on smaller pension plans.

This change affects all pension plans with a fiscal year end on or after November 26, 1992. Since the majority of pension plans have fiscal years based on the calendar year, most plans are affected by the new regulation.

Impact of Solvency Regulation on PBGF Assessments

Pension plans providing defined benefits that are subject to coverage by the Pension Benefits Guarantee Fund (PBGF) are advised that the assessment date for these plans has been changed from 6 to 9 months after the fiscal year end of the plan.

As well, the regulation provides for changes related to PBGF coverage and levies. For more details on coverage and new levies on portions of the PBGF Assessment base please refer to the article *Highlights from Ontario Regulation 712/92 - Regulation...Concerning Solvency Valuation and PBGF Coverage* in this issue of the *PCO Bulletin* on page 4.

Booklets for Members May Be Ordered

A new booklet called *Understanding Your Pension Plan* will be available this spring as advertised in the December 1992 issue of the *PCO Bulletin*. It outlines members' rights and entitlements under Ontario's *Pension Benefit Act* and is designed to explain in simple language how pension plans work.

Another publication called *When Your Pension Plan Winds Up* is now available in English

and French. It explains what members can expect from the wind-up process and what benefit entitlements and rights members generally have in wind-up situations.

If you are interested in receiving copies of either of these publications, please make your request to PCO Publications, Pension Commission of Ontario, 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2 or fax your request (416) 314-0650.

The PCO Administrative Practices and Policies Manual

In the June issue of the *PCO Bulletin* readers were invited to express their interest in obtaining copies of this publication. Unfortunately, the number of responses received was not sufficient to reduce the cost of printing the publication to a reasonable level. However, we are planning to make the same information available later this spring on an electronic bulletin board system. (Those interested in accessing the information must have a computer system with modem capabilities.)

The PCO will contact everyone who completed the business reply card about details. Anyone else interested in this endeavour should write the Communications Officer, Policy and Research Branch or fax (416) 314-0650.

Corrections

An error was made in the article entitled *LIF - Another Option to Retirement Planning* published in the *PCO Bulletin*, December, 1992 issue. Under the *Maximum Withdrawal Formula* on page 6 the copy reads "The table below shows the maximum percentage of the LIF balance (at the start of the year) which must be withdrawn annually." This should read "which *may* be withdrawn annually".

In that same article under the heading "Who Can Purchase an Ontario LIF" (page 2) the text reads that "the LIF is an option for individuals who are between the ages of 54 and 79. According to the Regulation individuals must be within ten years of their normal retirement date (under the pension plan)."

This text should read "individuals must be within ten years of the normal retirement date under the Canada Pension Plan (i.e. age 55)"...

Court Decisions

The following case deals with the manner in which a pension plan must be wound up even in cases where there has been no registration of the pension plan by Revenue Canada.

Re: Leigh Instruments Limited, In Bankruptcy
Court File Number: 33-047387 (Ottawa)
Court File Number: 31-252391 (Toronto)

Leigh Instruments Limited had made various past service pension contributions to an Executive Pension Plan which it had established. The pension plan was filed with the PCO and with Revenue Canada and the funds placed in trust with Montreal Trust by Leigh Instruments Limited. Revenue Canada did not accept the pension plan for registration and in April of 1990, following the filing of the plan, Leigh Instruments Limited made an assignment in bankruptcy.

The Trustee in Bankruptcy served the PCO with a motion in the Ontario Court (General Division), in bankruptcy, for directions. The trustee contended that the trust had failed and that the money on deposit with Montreal Trust should be returned to the Trustee in Bankruptcy for distribution to the creditors of Leigh Instruments Limited.

The PCO contended that the pension plan constituted a "pension plan" within the meaning of the PBA, and could therefore only be wound up in accordance with the provisions of the PBA.

The court found that the provisions of the PBA clearly applied to the plan and that the Trustee in Bankruptcy was required to allow the plan to be administered in accordance with the provisions of the PBA.

Administrative Practices

Clarification - Refunds of Employer Overpayment to Pension Fund

In the PCO Bulletin, Volume I, Issue 2 May 1990 issue, an administrative practice (on page 5) outlined the staff position with respect to a refund of employer overpayment to a pension fund. Paragraphs were incorrectly located in the layout of the article. Accordingly, it has been revised and appears below to assist PCO Bulletin readers.*

Refunds of Employer Overpayment to Pension Fund

There are certain situations in which an employer may be considered to over-contribute to a pension fund for the purposes of subsection 78(4) of the PBA including where:

- 1) the employer contributes on the basis of an actuarial report for which the effective

date has passed but a new report is not yet filed; or

- 2) otherwise, where payments have been made directly by an employer which should have been made from the pension fund.

In such circumstances, the employer may be considered to have over-contributed notwithstanding that there may be a solvency deficiency or going concern unfunded actuarial liability in the pension plan.

The Commission has determined that a requirement of notice to members is necessary for any application made under subsection 78(4) of the PBA with respect to refunds of employer overpayments. 1987 c.35, s. 79

** This is not the full administrative practice. The practice printed in the May 1990 issue continues summarizing the requirements for giving notice. Because of the length of those notice requirements, they are not reprinted here. Please refer to page 6 of the May 1990 PCO Bulletin.*

Marriage Breakdown and Pension Credits

At the time of marriage breakdown, many family property issues can be resolved in a straightforward manner. Unfortunately, when family assets include pension benefits, the finalization of a negotiated property settlement may be complicated and in some cases delayed because pension legislation may not be fully understood by the negotiating parties.

Different Approaches in Family and Pension Law

There is potential for conflict because family law anticipates an immediate property settlement whereas under pension law, the terms of the property settlement may not take effect for many years. This is because realization of the benefit entitlement is tied to the termination or retirement of the member-spouse from the pension plan.

Access to the pension benefit is realized only when the value of a pension benefit is transferred from a pension plan to a locked-in arrangement or when the member-spouse commences to receive payment of retirement income. (Where reference is made in the article to a "pension in pay", the term refers to the instances described here.)

Recent newspaper reports of court actions dealing with the issue of pension splitting on marriage breakdown reveal the difficulty of the process of assigning pension credits between spouses and the problem in obtaining immediate access to a share of those family assets held in a pension plan.

How Pension Credits May Be Assigned

Under the PBA, up to 50 per cent of the pension benefit accrued by the member-spouse during the period the parties were spouses may be credited to the non-member spouse. A pension credit for the non-member spouse is established when a copy of a domestic contract or court order as defined under the Family Law Act which provides for the credit is given to the plan administrator. However, it is important to understand that the non-member spouse's entitlement to receive payment from the pension plan does not become effective until the member-spouse's benefits are "in pay".

A pension plan member is not entitled to receive payment of a pension benefit until termination or retirement. Members and former members of a pension plan also become entitled to receive a pension benefit in pay when the pension plan itself is terminated but employment continues. Normally a member-spouse who retires will be entitled to begin receiving periodic pension payments only. Members who terminate prior to attaining the normal retirement age under the plan are usually entitled to elect alternative options. Some options provide for the transfer of the value of the pension benefit to a locked-in tax-assisted retirement arrangement, such as a locked-in RRSP.

When an individual member or former member of a pension plan becomes entitled to receive a pension benefit "in pay", the plan administrator must provide that individual with a written statement that sets out all the options applicable to that individual. Where the member or former member is named in a certified document filed with the plan administrator, a copy of the option statement must also be provided to the non-member spouse. At this time, the non-member spouse's entitlement to receive the pension credit "in pay" becomes effective. The non-member spouse may elect to receive the pension credit under any of the options available to the member-spouse.

Some pension plans may permit the member-spouse to continue employment or defer payment of the pension benefit beyond the normal retirement date under the plan. In these circumstances, the non-member spouse's entitlement to receive the pension credit "in pay" becomes effective when the member attains the normal retirement age.

A marriage may break down after the member-spouse has already transferred the value of the pension benefit to a locked-in RRSP, a Life Income Fund (LIF) or, has commenced receiving periodic pension payments. Under these circumstances, the PBA permits the immediate assignment of pension credits between the spouses in accordance with the terms of the applicable certified documents. Even if the non-member is entitled to a portion of a locked-in RRSP or to a portion of a LIF rather than a payment from a pension plan, the amount being transferred continues to be subject to the locking-in requirements of the PBA.

Please note that where the terms "value of pension benefit" or "benefit value" are used they include the commuted values transferred from defined benefit plans and contributions, with interest, transferred from defined contribution plans.

Your Questions Answered

The answers to the questions set out in this section have no legal authority nor should they be construed as legal advice. You should obtain independent legal, actuarial or other professional advice if you have a particular interest in any of the matters addressed herein.

Q. Subsection 8(2) of Schedule 1 under the Life Income Fund (the "LIF") regulation appears to prohibit the payment of a death benefit to a spouse if the spouse and the purchaser of the LIF have separated prior to the date of the purchaser's death. Does the Regulation to the PBA prevent the purchaser from providing survivor benefit entitlements to a spouse who is living separate and apart?

A. That particular subsection of Schedule 1 refers to a spouse's *legislated right* to a *survivor benefit* under subsection 8(1) of Schedule 1. Subsection 8(1) provides that, on the death of the purchaser, the spouse is entitled to a benefit equal to the balance of the fund. This requirement must be provided for in writing in the LIF arrangement.

The intent of subsection 8(1) is not to deny a spouse who is living separate and apart any entitlement in accordance with an election made by the purchaser or, following the death of the purchaser, the purchaser's legal representative. Subsection 8(1) simply *revokes the*

legislated right to a survivor benefit where the purchaser and the spouse are living separate and apart on the purchaser's date of death.

Q. I read the LIF article in the December 1992 *PCO Bulletin* and don't understand how money transferred from an Ontario LIF will be treated by pension regulators in other jurisdictions.

A. The last paragraph of the LIF article deals with two specific situations related to the transfer of LIF funds. Since Ontario cannot enforce legislated requirements restricting the use of locked-in benefit values held in LIFs if the funds were transferred outside of Canada, no such transfers are allowed. This same restriction also applies to locked-in monies held in RRSPs.

The second situation refers to the transfer of funds from an Ontario LIF to a financial institution outside the province of Ontario. For instance, a former plan member who terminates employment in Ontario purchases a LIF with funds locked-in in accordance with the *PBA*. Subsequently, the LIF annuitant transfers all or a portion of the funds from the Ontario LIF for the purpose of purchasing a LIF in another provincial jurisdiction. The carrier for the original LIF is not permitted to make the transfer unless the carrier for the second LIF agrees to administer the fund in accordance with Ontario's pension legislation. Again, the same requirements apply to the transfer of the balance from a locked-in RRSP. A former plan member cannot effect a change in the legislated requirement applicable to locked-in monies by making a transfer to a financial institution in another provincial jurisdiction.

Q. I am providing retirement planning advice to a client whose employment terminates next month. Under the terms of his employer's pension plan, my client may begin to receive pension payments in two years, at age 53. Would it be to his advantage to elect an option to transfer the value of the pension benefit to a locked-in RRSP?

A. First, we should state that the PCO does not offer advice on financial planning for retirement. However, the matter of electing to transfer the value of pension benefits to a locked-in RRSP for the purpose of receiving income at age 53 requires clarification since that transfer would result in a loss of rights in pension law.

If an individual wants to draw retirement income at age 53, a transfer should not be made to a locked-in RRSP. These funds cannot be used to purchase an annuity or a LIF

that commences payment prior to age 55. Any rights provided under the terms of a pension plan for retirement at an earlier age are lost when the value of pension benefits are transferred to a locked-in RRSP.

Therefore, this person may elect to leave the benefit entitlement in the pension plan and begin receiving payment from it at age 53. Another option to consider is to transfer the value of the pension directly from the pension plan to an insurance company for the purpose of purchasing a deferred annuity payable at age 53.

Q. What portability rights does a member have for vested but not locked-in benefits on termination or plan wind up?

A. Non locked-in benefits are subject to the terms of the pension plan. Only locked-in benefits are subject to prescribed portability rights, unless the plan provides otherwise.

Q. I have received conflicting advice about the nature of amendments which are required to deal with surplus withdrawal in an ongoing plan and on plan wind up (subsections 79(2) and (4)). I am advised the language should be general. What is the PCO seeking?

A. Every pension plan registered under the *PBA* should contain provisions that deal with surplus withdrawal from a continuing plan and from a plan at wind up. These provisions must be included in the plan text no later than December 31, 1994.

Effective January 1, 1995 any pension plan that does not specifically provide for surplus withdrawal while the plan continues in existence shall be construed to prohibit the withdrawal of surplus money[s] accrued on and after January 1, 1987.

Effective on the same date, any pension plan that does not provide for payment of surplus money[s] on the wind up of the pension plan shall be construed to require that surplus money[s] accrued on and after January 1, 1987 shall be distributed proportionately on the wind up of the pension plan among plan beneficiaries on the date of wind up.

Employers who amend their plan to identify the treatment of surplus in each of the relevant circumstances should ensure that the amendment is in compliance with the terms of all filed documents that pertain to the pension plan.

Please note that where the terms "value of pension benefit" or "benefit value" are used they include the commuted values transferred from defined benefit plan and contributions, with interest, transferred from defined contribution plans.

Superintendent of Pensions Notices/Orders

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act") [Notice of Proposed Wind-up Order], issued a Notice of Proposal to Make an Order pursuant to section 69 of the Act dated November 12, 1992 for the following pension plans:

- a) Jeffery Group Inc. Employee Pension Plan (C-15147)
- b) Jeffery Group Inc. Pension Plan for Designated Executives (C-102941)
- c) Pension Plan for the Employees of Maybank Foods Inc. (C-19298)
- d) Pension Plan for the Employees of Maybank Foods Inc. (C-19298) (Partial Wind up at the Sodor Inc. location)
- e) Pension Plan for the Pascal Group Employees (C-14761)

The Superintendent, pursuant to subsection 89(5) of the Act, [Notice of Proposed Wind-up Order], issued a Notice of Proposal to Make an Order pursuant to section 69 of the Act dated December 1, 1992 for the following pension plan:

- a) Pension Plan for the Employees of Orangeville Transport Limited (C-11108)

The Superintendent, pursuant to subsection 89(5) of the Act, [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the Act dated January 26, 1993 for the following pension plans:

- a) Pension Plan for the Employees of Canadian Asbestos Services Ltd. (C-100273)
- b) Pension Plan for the Employees of Dilworth, Secord, Meagher and Associates Limited (C-11531)
- c) Pension Plan for Employees of Maher Inc. (C-10834)

The Superintendent, pursuant to subsection 89(5) of the Act, [Notice of Proposed Wind-up Order], issued a Notice of Proposal to Make an Order pursuant to section 69 of the Act dated February 11, 1993 for the following pension plan:

- a) Pension Plan for Hourly Rated Employees of Jaeger Canada Equipment Ltd. (C-15969)

Orders

The Superintendent issued Orders dated November 16, 1992, pursuant to section 69 of the Act [Wind-up Orders] for the following pension plans:

- a) Pension Plan for Union Employees of the Rexdale Plant of Chromalox Inc. (C-103203) (effective August 30, 1991)
- b) Pension Plan for Certain Salaried Employees of Chromalox Inc. (C-9302) (effective August 30, 1991)

The Superintendent issued an Order dated November 25, 1992, pursuant to section 69 of the Act [Wind-up Order] for the following pension plan:

- a) Pension Plan for Certain Cambridge Hourly Employees of Chromalox Inc. (C-15362) (effective August 30, 1991)

The Superintendent issued Orders dated January 11, 1993 pursuant to section 69 of the Act [Wind-up Order] for the following pension plans:

- a) Lord & Burnham Inc. Employees' Pension Plan (C-7526) (effective March 1, 1991)
- b) Pension Plan for the Management Employees of Power Tank Lines Limited (C-16761) (effective May 18, 1991)
- c) Pension Plan for the Non-Management Employees of Power Tank Lines Limited (C-102584) (effective May 18, 1991)
- d) Pension Plan for H.H.C. Marketing Corporation (C-18950) (effective October 28, 1991)

The Superintendent issued Orders dated February 8, 1993 pursuant to section 69 of the Act [Wind-up Order] for the following pension plans:

- a) Jeffery Group Inc. Employee Pension Plan (C-15147) (effective February 28, 1991)
- b) Jeffery Group Inc. Pension Plan for Designated Executives (C-102941) (effective January 6, 1989)
- c) Pension Plan for the Employees of Maybank Foods Inc. (C-19298) (effective May 31, 1986)
- d) Pension Plan for the Employees of Maybank Foods Inc. (C-19298) (Partial Wind up for those members employed by Sodor Inc. effective March 4, 1986)
- e) Pension Plan for the Pascal Group Employees (C-14761) (effective January 26, 1992)

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

1993 Commission Meeting Dates

The Pension Commission will convene on the following Thursdays in 1993:

March 25, April 29, May 27, June 24, July 29, August 26, September 23, October 28, November 25, December 16, 1993.

PCO Board Members

The following members comprise the Commission:

Joseph Regan, Chairman
Eileen Gillese, Vice Chair
Darcie Beggs
David Brown
Donald Collins (to February 28, 1993)
Clifford Evans
Robert Nickerson
Joyce Stephenson
Monica Townson

Hearings Before the Commission

General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published March 1991, Vol.2, Issue 1. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, August 19, 20, October 23 - 25, 1991. On May 20, 1992, the hearing was adjourned sine die.

Stelco Inc. Retirement Plan for Salaried Employees (C-6968)

A hearing commenced January 12, 14, 18, 19 and 20, 1993, to review a Proposal to Make an Order dated February 28, 1992, issued by the Superintendent of Pensions, that the plan be partially wound up. Decisions from two pre-hearing conferences held July 7 and November 30, 1992 were published respectively in (PCOB, Vol. 3, Issue 2, October, 1992) and this issue. On January 20, 1993 the hearing was adjourned. It will resume on March 23, 24, 26, 29 and 31, 1993 (Macdonald Block, Queen's Park).

Pension Plan for Designated Employees of Tate Access Floors Inc. (C-103686)

The Commission has been requested to review a proposal dated March 31, 1992 by the Superintendent of Pensions to make an Order that the plan be wound up. This matter has been adjourned sine die on consent.

Commission Decisions - Applications Approved Since October, 1992

Applications Approved Under Section 8 of Regulation 909, R.R.O. 1990 (as amended by Ontario Regulation 743/91) and Subsection 78(1) of the Act - Request for Consent to Return of Surplus Pursuant to a Court Order

At the Commission meeting held October 22, 1992, the Commission consented pursuant to subsection 78(1) of the Act and subsection 7a(2) of Ontario Regulation 708/87, as amended by Ontario Regulation 743/91, to filing with the court a consent to the payment of plan surplus as follows.

- a) **E.M. Plastic & Electric Products Limited Employees' Pension Plan (C-15052)**
 - a) to the division of the surplus and the method of dividing the share of the surplus to the respondents referred to in the Court Order of the Honourable Mr. Justice Lane dated June 29, 1992 (the "Court Order"); and
 - b) to the immediate payment of surplus to E.M. Plastic & Electric Products Limited from the E.M. Plastic & Electric Products Limited Employees' Pension Plan, Registration Number C-15052 (the "Pension Plan"), in the amount of \$284,580 (which is 30% of the total amount of surplus and 50% of the employer's share), as at August 31, 1991, plus investment earnings thereon to the date of payment.

The Commission will file its consent with the Court to the above.

The remaining \$284,580 of surplus (the remaining 50% of the employer's share) **shall not be paid** to E.M. Plastic & Electric Products Limited until E.M. Plastic & Electric Products Limited satisfies the Commission that:

- (i) all legal and actuarial fees referred to in the Court Order have been paid;
- (ii) that all benefits and other payments including benefit enhancements to which members, former members and any other persons are entitled by virtue

of the Pension Plan and the Court Order have been paid, purchased or otherwise provided for to the satisfaction of the Commission; and

- (iii) that the Superintendent has registered a plan amendment which provides for the settlement of the surplus assets of the plan in accordance with the Court Order.

Once E.M. Plastic & Electric Products Limited has satisfied the Commission that the above-mentioned conditions (i) to (iii) have been met, the Commission will file its consent to the payment of the remainder of surplus to E.M. Plastic & Electric Products Limited with the Court.

b) Borg-Warner Automotive (Canada) Limited Retirement Income Plan (C-103277)

Payment of surplus to Borg-Warner Automotive (Canada) Limited from the Borg-Warner Automotive (Canada) Limited Retirement Income Plan, Registration Number C-103277, in the amount of \$3,266,855 as at May 31, 1991, plus investment earnings thereon to the date of payment provided that this consent shall not be effective until Borg-Warner Automotive (Canada) Limited satisfies the Commission that all basic benefits and all payments from surplus to which members, former members and any other persons are entitled to have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Once Borg-Warner Automotive (Canada) Limited has satisfied the Commission that the above-noted condition has been met, the Commission will file its consent with the Court.

At the Commission meeting held November 26, 1992, pursuant to subsection 78(1) of the Act and Section 8 of Regulation 909, R.R.O. 1990, as amended by Ontario Regulation 743/91, the Commission consented to filing with the court a consent to the payment of plan surplus as follows.

a) Retirement Plan for Salaried Employees of Canadian Pneumatic Tool Company Limited (C-9836) - Application by Chicago Pneumatic Tool Company Canada Limited

Payment of surplus to Chicago Pneumatic Tool Company Canada Limited from the Retirement Plan for Salaried Employees of Canadian Pneumatic Tool Company Limited, Registration Number C-9836, in the amount of \$342,148 as at June 30, 1992 plus investment earnings thereon to the date of payment.

The Commission will file its consent with the Court pursuant to clause 7a(2)(c) of O. Reg. 708/87 (as amended) as it read immediately before December 18, 1991.

b) Pension Plan for Management Salaried Employees of Extendicare Health Services Inc. (C-16248)

Payment of surplus to Extendicare Health Services Inc. from the Pension Plan for Management Salaried Employees of Extendicare Health Services Inc. in the amount of \$1,505,533 as at December 31, 1989 plus investment earnings thereon to the date of payment.

Applications Under Section 8 of Regulation 909, R.R.O. 1990 (as amended by Ontario Regulation 743/91) and Subsection 78(1) of the Act - Surplus Withdrawal on Plan Wind Up

At the Commission meeting held October 22, 1992, pursuant to subsection 78(1) of the Act and clause 7a(1)(b) of Ontario Regulation 743/91, the Commission consented to the payment of plan surplus as follows.

a) Pension Plan for Salaried Employees of Upton Bradeen & James Inc. (C-16387)

Payment of surplus to Upton Bradeen & James Inc. from the Pension Plan for Salaried Employees of Upton Bradeen & James Inc. in the amount of \$212,000 (estimated as at September 30, 1991) out of a total surplus of \$282,600 (estimated as at September 30, 1991, in accordance with the surplus sharing agreements entered into pursuant to clause 7a(1)(b) of Ontario Regulation 743/91, plus investment earnings thereon to the date of payment, **provided that this consent shall not be effective until Upton Bradeen & James Inc. satisfies the Commission that all benefits and other payments, including additional payments pursuant to the surplus sharing agreements, to which members, former members and any other persons are entitled on the termination of the pension plan have been paid, purchased or otherwise provided for to the satisfaction of the Commission.**

At the Commission meeting held November 26, 1992, pursuant to subsection 78(1) of the Act and Section 8 of Regulation 909, R.R.O. 1990, as amended by Ontario Regulation 743/91, the Commission consented to the payment of plan surplus as follows.

a) **Weetabix of Canada Limited Executive Pension Plan (C-16332)**

Payment of surplus to Weetabix of Canada Limited from the Weetabix of Canada Limited Executive Pension Plan, Registration Number C-16332, in the amount of \$186,115 as at September 1, 1991, plus investment earnings thereon to the date of payment.

b) **International Artcrafts Company Limited Pension Plan for Employee Jerry Duiker (C-18127)**

Payment of surplus to International Artcrafts Company Limited from the International Artcrafts Company Limited Pension Plan for Employee Jerry Duiker, Registration Number C-18127, in the amount of \$108,032.36 (estimated as at May 31, 1991) out of a total surplus of \$216,064.71 (estimated as at May 31, 1991), plus investment earnings thereon to the date of payment. This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

c) **International Artcrafts Company Limited Pension Plan for Employee Wayne Nelles (C-18124)**

Payment of surplus to International Artcrafts Company Limited from the International Artcrafts Company Limited Pension Plan for Employee Wayne Nelles, Registration Number C-18124, in the amount of \$97,486.78 (estimated as at May 31, 1991) out of a total surplus of \$194,973.57 (estimated as at May 31, 1991), plus investment earnings thereon to the date of payment. This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held December 17, 1992, pursuant to subsection 78(1) of the Act and Section 8 of Regulation 909, R.R.O. 1990, as amended by Ontario Regulation 743/91, the Commission consented to the payment of plan surplus as follows.

a) **Standco Canada, Ltd. Retirement Income Plan (C-7507)**

Payment of surplus to Standco Canada Limited from the Standco Canada Ltd. Retirement Income Plan, Registration Number

C-7507, in the amount of \$223,697 as at December 31, 1991, plus investment earnings thereon to the date of payment. This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

b) **Pension Plan for Designated Employees of Continental Inn (Barrie) Limited (C-16136)**

Payment of surplus to Continental Inn (Barrie) Limited from the Pension Plan for Designated Employees of Continental Inn (Barrie) Limited, Registration Number C-16136, in the amount of \$86,087 as at September 30, 1991, plus investment earnings thereon to the date of payment. This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

c) **The Pension Plan for Senior Executive Employees of D.S.I.L. Drilling Inc. (C-15868)**

Payment of surplus to D.S.I.L. Drilling Inc. from The Pension Plan for Senior Executive Employees of D.S.I.L. Drilling Inc., Registration Number C-15868, in the amount of \$130,700 as at December 1, 1990, plus investment earnings thereon to the date of payment.

d) **B.F. Goodrich Canada Inc. Pension Plan for Kitchener Plant, Local 677 (United Rubber, Cork, Linoleum and Plastic Workers of America (C-16338))**

Payment of surplus to B.F. Goodrich Canada Inc. from the B.F. Goodrich Canada Inc. Pension Plan for Kitchener Plant, Local 677 (United Rubber, Cork, Linoleum and Plastic Workers of America), Registration Number C-16338, in the amount of \$3,951,348 (estimated as at July 31, 1992) out of a total surplus of \$5,289,623 (estimated as at July 31, 1992) plus investment earnings thereon to the date of payment.

b) **This consent shall not be effective until:**

1. The administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have

been paid, purchased or otherwise provided for to the satisfaction of the Commission.

2. A trust fund has been established and the surplus allocated to plan members and former members under the surplus sharing agreement is transferred to the trust fund to be distributed pursuant to the surplus sharing agreement by the Trustees.

At the Commission meeting held January 28, 1993, pursuant to subsection 78(1) of the Act and Section 8 of Regulation 909, R.R.O. 1990, as amended by Ontario Regulation 743/91, the Commission consented to the payment of plan surplus as follows.

a) The Pension Plan for Disogrin Industries of Canada Limited (C-17997)

Payment of surplus to Disogrin Industries of Canada Limited from The Pension Plan for Disogrin Industries of Canada Limited, Registration Number C-17997, in the amount of \$36,216 as at January 1, 1989, plus investment earnings thereon to the date of payment.

b) Pension Plan for Employees of Wm. Roberts Electrical & Mechanical Inc. (C- 103333)

Payment of surplus to Wm. Roberts Electrical & Mechanical Inc. from the Pension Plan for Employees of Wm. Roberts Electrical & Mechanical Inc., Registration Number C-103333, in the amount of \$47,520 as at March 15, 1991, plus investment earnings thereon to the date of payment.

Application Approved under Section 8 of Regulation 909, R.R.O. 1990 (as amended by Ontario Regulation 743/91) and subsection 78(1) and subsections 63(7) & (8) of the Act - Surplus Withdrawal Matters and Return of Member Required Contributions

At the Commission meeting held January 28, 1993, the Commission consented to the payment of plan surplus and to the refund of member required contributions as follows.

a) Pension Plan for Employees of the Canadian Construction Association (C-14237)

1. pursuant to subsections 63(7) & (8) of the Act to a refund of member required contributions from the Pension Plan for Employees of the Canadian Construction Association, Registration Number C-14237, in the amount of \$338,173 as at September 30, 1991 plus investment earnings thereon to the date of payment.

2. pursuant to subsection 78(1) of the Act and Section 8 of Regulation 909, R.R.O. 1990, as amended by Ontario Regulation 743/91, to a payment of surplus to the Canadian Construction Association from the Pension Plan for Employees of the Canadian Construction Association, Registration Number C-14237, in the amount of \$658,653 as at October 1, 1991, plus investment earnings thereon to the date of payment. This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Applications Approved under Subsections 63(7) & (8) of the Act - Return of Member Contributions

At the Commission meeting held October 22, 1992, the Commission consented pursuant to subsection 63(7) & (8) of the Act to the refund of member required contributions.

a) Pension Plan for Employees of Timberland Equipment Limited (C-11681)

In light of the fact that the employer has made a lump sum payment to ensure the funded status of the pension plan remained the same, a refund of the member required contributions for executive employees from the Pension Plan for Employees of Timberland Equipment Limited, Registration Number C-11681, in the aggregate amount of \$167,663 as at January 1, 1991 plus credited interest thereon to the date of payment.

At the Commission meeting held November 26, 1992, the Commission consented pursuant to subsection 63(7) & (8) of the Act to the refund of member required contributions.

a) Society of Management Accountants of Canada Employees (1965) Pension Plan (C-6591)

Refund of the member required contributions from the Society of Management Accountants of Canada Employees (1965) Pension Plan, Registration Number C-6591, in the amount of \$344,120 as at August 1, 1991 plus credited interest thereon to the date of payment.

b) Pension Plan for Directors of RBC Dominion Securities Inc. (C-104037)

Refund of the member required contributions from the Pension Plan for Directors of RBC Dominion Securities Inc., Registration Number C-104037, in the amount of \$5,663,000 as at January 1, 1992 plus credited interest thereon to the date of payment conditional upon the company paying a lump sum payment into the fund in the amount of \$2,149,000 as at January 1, 1992 plus credited interest thereon to the date of payment.

Applications under Subsection 78(4) of the Act - Return of Employer Payments or Overpayments

At the Commission meeting held October 22, 1992, the Commission consented pursuant to subsection 78(4) of the Act to the refund of overpayments.

a) **Pension Plan for Employees of Skandia Canada Reinsurance Company (C-14636)**

Refund of overpayments of \$34,833 from the Pension Plan for Employees of Skandia Canada Reinsurance Company, Registration Number C-14636, to Skandia Canada Reinsurance Company.

At the Commission meeting held January 28, 1993, the Commission consented pursuant to subsection 78(4) of the Act to the refund of overpayments.

a) **The Constellation Assurance Contributory and Non-Contributory Pension Plans (C-13433) - Application by Prudential Group Assurance (formerly Constellation Assurance Company)**

Refund of an overpayment of contributions in the amount of \$244,889.78 to Prudential Group Assurance (formerly Constellation Assurance Company) from The Constellation Assurance Contributory and Non-Contributory Pension Plans, Registration Number C-13433.

Request for Consent to Surplus Distribution on Plan Wind up as a cash payment

At the Commission meeting held October 22, 1992, the Commission did not consent to the following distribution of surplus in the form of cash.

a) **Lasalle Machine Tool of Canada Limited Salaried Employees Pension Plan (C-12096)**

That the surplus distribution to three plan members (Paul Barwise, Gary Hicks and Ed

Murphy) of the Lasalle Machine Tool of Canada Limited Salaried Employees Pension Plan, Registration No. C-12096, whose surplus entitlement is more than 4% of the Maximum Pensionable Earnings level determined under the Canada Pension Plan, not be allowed to receive their share of surplus distribution in the form of cash. This application is not consistent with the Commission's duty under section 96 of the Act to promote improvement of pension plans or with current Commission policy.

At the Commission meeting held November 26, 1992, the Commission consented to the following distribution of surplus in the form of cash.

a) **Retirement Income Plan for Salaried Employees of SunarHauserman Ltd. (C-11318)**

That the surplus distribution to the 17 individuals identified in the application, plan members of the Retirement Income Plan for Salaried Employees of SunarHauserman Ltd., Registration No. C-11318, may be in the form of cash.

b) **Robinson's, A Division of Comark Inc. Employees' Pension Plan (C-610)**

That the surplus distribution to plan members of Robinson's, A Division of Comark Inc. Employees' Pension Plan, Registration No. C-610, whose surplus share is less than 4% of the Year's Maximum Pensionable Earnings, may be in the form of cash.

At the Commission meeting held December 17, 1992, the Commission consented to the following distribution of surplus in the form of cash.

a) **E.M. Plastic & Electric Products Limited Employees' Pension Plan (C-15052)**

That the surplus distribution to individuals identified in the application, plan members of the E.M. Plastic & Electric Products Limited Employees' Pension Plan, Registration No. C-15052, be permitted in the form of a cash option as an alternative to benefit enhancements.

b) **Lasalle Machine Tool of Canada Limited Salaried Employees Pension Plan (C-12096)**

That the surplus distribution to plan members of the Lasalle Machine Tool of Canada Limited Salaried Employees Pension Plan, Registration No. C-12096, be permitted in the form of a cash option as an alternative to benefit enhancements.

Decision

IN THE MATTER of the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act")

AND IN THE MATTER of a Proposal to Make an Order dated February 28, 1992 by the Superintendent of Pension for Ontario under Section 69 of the Act in Respect of the Stelco Retirement Plan for Salaried Employees, Ontario Registration Number C-6968

AND IN THE MATTER of a Hearing in Accordance with subsection 89(8) of the Act

AMONG:

STELCO INC.

- and -

The SUPERINTENDENT OF PENSIONS

- and -

A GROUP OF PERSONS REPRESENTED BY

KOSKIE AND MINSKY ("GOLD GROUP")

- and -

A GROUP OF PERSONS REPRESENTED BY

STOCKWOOD, SPIES, ASHBY & CRAIGEN ("CRAIGEN GROUP")

- and -

MR. NEIL K. VEINOT

PRELIMINARY DECISION

Pre-Hearing Conference Held November 30, 1992

900 Bay Street, Macdonald Block, Second Floor, Huron Room

Queen's Park, Toronto, Ontario M7A 1N3

In accordance with the Notice to members and former members of the Stelco Retirement Plan for Salaried Employees (the "Stelco Plan") dated September 23, 1992, the Pre-Hearing Conference was held to determine the undernoted issues.

1. The persons apart from Stelco Inc. ("Stelco"), the Superintendent of Pensions (the "Superintendent"), Harold Dawson, Arthur Frewin, Stanley Stek, Wayne Robinson, Antonia Valeri, Thomas John Wallace, Gene Yachetti who should be added as parties to this Hearing and given standing to give evidence and make submissions.
2. The order and manner in which the parties to the Hearing will call evidence and make submissions. This will include submissions with respect to who will call evidence first, the use of agreed statements of fact, affidavits, experts' reports, and the exchange between the parties of outlines of the evidence which they intend to call.
3. Whether Stelco should be required to give particulars with respect to its objection to the Proposed Order.
4. Whether the Superintendent should be required to give reasons for his Proposed Order in addition to those set out in the Proposed Order.
5. Whether either Stelco, the Superintendent, or both should be required to produce documents relevant to the issues in this Hearing.
6. Any other matter of a preliminary or procedural nature relevant to this Hearing provided that any person entitled to be a Party to this Hearing wishing to raise such a preliminary or procedural matter advises Mary Crocker, Registrar, Pension Commission of Ontario, 101 Bloor Street West, 9th Floor, Toronto, Ontario, M7A 2K2, by letter of his or her desire to raise such preliminary or procedural matter which letter must be received by the Registrar by November 13, 1992.

I Parties to the Hearing [Standing]

Both the Superintendent and Stelco are entitled to be parties to this hearing pursuant to subsection 89(11) of the Pension Benefits Act. Both subsection 89(11) of the Act and section 5 of The Statutory Powers Procedure Act empower the Tribunal to determine what other persons should be added as parties. Pursuant to these provisions and in accordance with the oral orders made at the hearing, the following have been granted standing as parties:

- 1) Stelco Inc.;
- 2) the Superintendent of Pensions;
- 3) the persons represented by Koskie and Minsky in respect of whom Mr. Gold has sought standing (the "Gold Group");
- 4) the persons represented by Stockwood, Spies, Ashby & Craigen in respect of whom Mr. Craigen has sought standing (the "Craigen Group");
- 5) Mr. Neil K. Veinot.

The Gold Group has been granted standing on the basis that it is composed of both persons who could benefit from the proposed order if it is confirmed and other members and former members of the Plan.

The Craigen Group has been granted standing on the basis that it is made up of members of the Plan who allege that they may be materially affected by our decision on the proposed order.

Mr. Veinot has been granted standing on the basis that he is a former member of the Plan whose rights he alleges may be affected depending on the decision made by the Tribunal.

II Order of Proceedings

This hearing was required by Stelco when it exercised its right under subsection 89(6) of the Pension Benefits Act to require a Hearing. In accordance with the usual rule that the party requiring or causing a Hearing to be held, which was applied by the Tribunal in its Re General Motors Limited and the Pension Commission of Ontario decision dated January 25, 1992, the Tribunal directs Stelco to call evidence first when the Hearing on the merits begins on January 12, 1993. Consistent with being required to proceed first, Stelco shall have the right to call reply evidence after the other parties have called their evidence. It is to be understood that Stelco will have the opportunity to call reply evidence with respect to any matters that it could not have reasonably anticipated when it gave its evidence-in-chief.

Accordingly, the Tribunal orders and directs that the parties call evidence and make submissions in the following order:

- 1) Stelco will call evidence and make submissions first;
- 2) The Craigen Group;
- 3) The Superintendent;
- 4) The Gold Group;
- 5) Mr. Veinot.

The Tribunal urges all parties taking the same position to co-ordinate their evidence and submissions as much as possible so as to avoid unnecessary duplication.

III Production of Documents, Manner of Giving Evidence

With respect to these matters, the Tribunal confirms the following orders that were made orally at the Pre-Hearing Conference.

- 1) The Superintendent is directed to provide a summary of the facts upon which he relied in making his proposed order to all parties and the Tribunal as well as its counsel by Tuesday, December 8, 1992;
- 2) Stelco is directed to provide all other parties and the Tribunal as well as its counsel with the following by Friday, December 18, 1992;
 - a) Particulars of its objections to the Superintendent's proposed order which are to include both its legal and factual contentions why the proposed order should not be made;
 - b) A list of the witnesses that it proposes to call;
 - c) A summary of the evidence to be given by each of its witnesses;
 - d) Copies of all documents upon which it intends to rely;
 - e) Any expert reports from any experts which it proposes to call as witnesses together with an outline of the experts' qualifications;

- 3) Counsel for all parties and Mr. Veinot are to provide each other as well as the Tribunal and its counsel with the following by Thursday, December 31, 1992;
 - a) Particulars of their position with respect to the proposed order which are to include both their legal and factual contentions why the proposed order should be made or not made as the case may be;
 - b) A summary of the evidence to be given by each of their witnesses;
 - c) A list of the witnesses that they propose to call;
 - d) Copies of all documents upon which each intend to rely;
 - e) Reports from any experts that each intend to call as witnesses together with an outline of the experts' qualifications.
- 4) Affidavits may be used subject to the right of cross-examination by any other party.
- 5) Counsel for all parties and Mr. Veinot are directed to meet with the Tribunal's counsel on January 5, 1993 at 10:00 a.m. at the offices of McMillan Binch, Barristers & Solicitors, Suite 3800, South Tower, Royal Bank Plaza, Toronto, Ontario M5J 2J7 to attempt to work out an Agreed Statement of Fact to the extent possible.

Tribunal Documentation

The Tribunal will require six copies of all documentation to be delivered to the Registrar, Pension Commission of Ontario.

The Tribunal also confirmed that the Hearing on the merits of the Proposed Order will proceed as scheduled in the Notice of Hearing dated September 23, 1992, on January 12, 13, 14, 18, 19 and 20, 1993 commencing at 9:30 a.m. at 900 Bay Street (Macdonald Block, second floor, Erie/Thames/St. Clair Rooms), Queen's Park Toronto, Ontario M7A 1N3.

DATED AT TORONTO, this 4th Day of December, 1992

M. Joseph Regan, Chairman
 M. David R. Brown
 Donald G. Collins

Cumulative Index

For the past two years in the *PCO Bulletin* February issue, all articles have been summarized in a cumulative index format.

In future, due to the volume of material, we will summarize notices, administrative practices, regulations and Commission decisions arising from hearings. The format has been modified with articles listed alphabetically and by year with the most recent year appearing first.

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Otis Canada Inc., pension plan for Draftsmen Local 164 (decision under subsections 79(1) and 80(4) of the PBA, 1987 and clause 7a(2)(c) of the Regulation)	February/90	1/1	16
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Contacts For PCO Enquiries

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Communications	Judith Chalmers	314-0699
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Freedom of Information Requests	Ken Doiron	314-0690
General Inquiries		314-0660
Policy Issues	Susan Ellis Cynthia James	314-0703 314-0702
Registrar/Secretary to the Commission	Mary Crocker	314-0624

Contacts For Plan Related Enquiries:

1. SECTOR ALLOCATIONS – (At least one plan with 250 or more members)

Sectors	Pension Officer	Alternate
Agriculture, Mining, Construction, Finance...	Rosemine Jiwa-Jutha	314-0611 Alain Malaket 314- 0609
Trade, Commercial, Public Administration	Larry Falconer	314-0610 Penny McIlraith 314- 0594
Food, Beverages, Textiles, Paper...	Jaan Pringi	314-0586 John Staric 314- 0596
Rubber, Plastics, Transportation Equipment	Larry Martello	314-0587 Mark Eagles 314- 0599
Printing, Primary Metals, Machinery...	Mark Henry	314-0584 Doug Kaye 314- 0605
Electrical, Non-Metallic, Chemicals...	David Kearney	314-0590 Natasha Vandenhoven 314- 0598

2. ALPHABETICAL ALLOCATIONS – Defined Benefit & Multi-Employer Plans (Plans with less than 250 members)

Alpha Range	Pension Officer	Alternate
A -BRI	David Allan	314-0612 Elizabeth Addo 314- 0607
BRO -COM	Steve Young	314-0646 Brigitte Khan 314- 0640
CON -EZZ	Jules Huot	314-0613 Claude De Souza 314- 0608
F -HAZ	Larry Murray	314-0644 Merle Corbie 314- 0637
HEA -KMZ	William Qualtrough	314-0641 Lynn Barron 314- 0639
KNA -MOQ	Elizabeth Carter	314-0604 Wynnell De Landro 314- 0603
MOR -PNZ	Stanley Chan	314-0635 Sandy Malloy 314- 0636
POL -SHE	Maureen Barber	314-0645 Debra Bain 314- 0638
SHI -TORO	Daphne Ludgate	314-0592 Margaret Fennell 314- 0600
TORR -*	John Graham	314-0647 Brigitte Khan 314- 0640

*Companies with numeric-alphabetical names.

3. ALPHABETICAL ALLOCATIONS – Defined Contributions Plans

Alpha Range		Pension Analyst		Alternate	
A	-BAX	Sandy Malloy	314-0636	Stanley Chan	314- 0635
BAY	-Cariada	Penny McIlraith	314-0594	Larry Falconer	314- 0610
Canadian-COK		Margaret Fennell	314-0600	Daphne Ludgate	314- 0592
COL	-DIL	Claude De Souza	314-0608	Jules Huot	314- 0613
DIM	-FLO	Elizabeth Addo	314-0607	David Allan	314- 0612
FLU	-HAL	Alain Malaket	314-0609	Rosemine Jiwa-Jutha	314- 0611
HAM	-JAL	Brigitte Khan	314-0640	John Graham	314- 0647
JAM	-LEU	Wynnell De Landro	314-0603	Elizabeth Carter	314- 0604
LEV	-MIL	Doug Kaye	314-0605	Mark Henry	314- 0584
MIN	-ONT	Natasha Vandenhoven	314-0598	David Kearney	314- 0590
ONU	-RAL	Debra Bain	314-0638	Maureen Barber	314- 0645
RAM	-SHA	John Staric	314-0596	Jaan Pringi	314- 0586
SHE	-THA	Merle Corbie	314-0637	Larry Murray	314- 0644
THE	-VUL	Lynn Barron	314-0639	William Qualtrough	314- 0641
VUM	-*	Mark Eagles	314-0599	Larry Martello	314- 0587

4. ALPHABETICAL ALLOCATIONS – Pension Plans of Insolvent Companies

Alphabetical Range		Coordinator	
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F	-P	Robin Gray	314-0593
Q	-*	David Rogers	314-0597

*Companies with numeric-alphabetical names.

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